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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

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# House of Representatives

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Ms. EDWARDS of Maryland).

## DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
*December 11, 2009.*

I hereby appoint the Honorable DONNA F. EDWARDS to act as Speaker pro tempore on this day.

NANCY PELOSI,
*Speaker of the House of Representatives.*

## PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

I waited, I waited for You, Lord, and You stooped down to me.

You heard my cry and drew me from the deadly pit from this miry clay.

You set my feet upon solid rock and helped me make my first steps into the light of a new day.

You put a new song into my mouth and from the depths, O Lord God, I offer You praise.

Amen.

## THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. KLEIN of Florida. Madam Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Speaker's approval of the Journal.

The SPEAKER pro tempore. The question is on the Speaker's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

**NOTICE**

If the 111th Congress, 1st Session, adjourns sine die on or before December 23, 2009, a final issue of the *Congressional Record* for the 111th Congress, 1st Session, will be published on Thursday, December 31, 2009, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2009, and will be delivered on Monday, January 4, 2010.

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Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–59.

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By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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Mr. KLEIN of Florida. Madam Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Pursuant to clause 8, rule XX, further proceedings on this question will be postponed.

The point of no quorum is considered withdrawn.

## PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from New Jersey (Mr. LANCE) come forward and lead the House in the Pledge of Allegiance.

Mr. LANCE 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.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to five requests for 1-minute speeches on each side of the aisle.

## IN PURSUIT OF PEACE

(Mr. KUCINICH asked and was given permission to address the House for 1 minute.)

Mr. KUCINICH. Madam Speaker, yesterday our President mused about the inevitability built of war, war's instrumentality in the pursuit of peace, and just wars.

It is important for us to reflect on his words, because once we believe in the inevitability of war, war becomes a self-fulfilling prophecy. Once we are committed to war's instrumentality in pursuit of peace, we begin the Orwellian journey to the semantic netherworld where war is peace, where the momentum of war overwhelms hopes for peace.

And once we wrap doctrines perpetuating war in the arms of justice, we can easily legitimate the wholesale slaughter of innocents. The war against Iraq was based on lies, the wars in Afghanistan and Pakistan based on flawed doctrines of counterinsurgency. War is often not just; sometimes it is just war. And our ability to rethink the terms of our existence, to explore the possibility of peace without war, may well determine whether we end war or war ends us.

## CONGRATULATING SUMMIT HILLTOPPERS

(Mr. LANCE asked and was given permission to address the House for 1 minute.)

Mr. LANCE. Madam Speaker, I rise today to congratulate the Summit Hilltoppers who captured the New Jersey Group 2 North 2 State sectional football title on December 3 at Giants Stadium.

Coached by John Liberato, the Hilltoppers won a 28–19 victory over the Orange Tornadoes. On offense, the Hilltoppers were led by quarterback Joe Jaskolski and running back Matt Rea. For the game, Jaskolski ran 17 times for 119 yards while completing six pass attempts for 134 yards. Rea finished with 167 yards on the ground and two touchdowns on 16 carries.

The Summit defense was anchored by Pat Birosak, Michael Steinberg, Mike Watts, Ryan O'Malley, Kevin McNany and Danny Feeney, holding Orange to just 19 points.

I ask all of my colleagues to join me in congratulating Coach Liberato and the entire Summit Hilltoppers football team for their victory over Orange to win the State sectional title.

## STOP RECKLESS SPENDING

(Mr. GINGREY of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY of Georgia. Madam Speaker, yesterday this House voted on a 2,500-page spending bill with a price tag of almost a half trillion dollars that we will have to borrow. The majority in this House just doesn't seem to get it. We are in the midst of a recession, with 10 percent unemployment, 15.4 million people out of work. Our Federal deficit is over $12 trillion, and the Democrats will vote next week to raise that another $1.8 trillion.

Yet this half-trillion-dollar spending bill, which combines six into one, represents a 12.5 percent spending increase over 2009 and a 24 percent increase over 2008; 24 percent over 2008. I ask, How much of this is real needs of our citizens versus just wants of spendthrift politicians?

Madam Speaker, the Democrats must stop this reckless spending spree. We need to have the ability to make tough choices to get our economy back on track and pass legislation that helps American families looking to make ends meet in these tough times.

## ANTIBIOTICS IN ANIMAL AGRICULTURE

(Mr. BOSWELL asked and was given permission to address the House for 1 minute.)

Mr. BOSWELL. Madam Speaker, the United States has the safest, most plentiful, and most affordable food supply in the world. This abundant food supply didn't happen by accident. The United States has put policies and production practices in place which allows us to continue to feed the world at affordable prices.

However, animal agriculture and those production practices are under attack. Some in Congress would ban the use of antibiotics in animal agriculture. As a lifelong farmer still managing a cow-calf operation in Iowa and former chairman of the Livestock Subcommittee, the use of antibiotics in animal agriculture is an issue I have personally been involved in.

As a livestock producer, I can attest that the industry is committed to using antibiotics responsibly and has developed responsible use guidelines. Producers didn't develop these guidelines because Congress told them to do so. They developed the guidelines because it was the right thing to do for their animals and their consumers.

Those in Congress who would ban the use of antibiotics for nontreatment purposes have a noble goal—improving human health. However, scientific evidence does not exist that this ban would reduce antibiotic resistance in humans. They are looking to penalize an industry without appropriate data to back up their claim.

A 2006 report from the Institute of Food Technologists said ''eliminating antibiotic drugs from food animal production may have little positive effect on resistant bacteria that threaten human health.'' In fact, eliminating animal antibiotics may be detrimental to public health.

I believe that a ban on non-therapeutic antibiotics in animal agriculture will have detrimental effects, not only on our farmers who feed the world safe and wholesome meat and meat products, but also on public health.

## UNSUSTAINABLE DEBTS

(Mrs. SCHMIDT asked and was given permission to address the House for 1 minute.)

Mrs. SCHMIDT. Madam Speaker, I rise yet again another day to remind ourselves that this Nation's AAA credit rating is about to be downgraded if we don't stop the spending and continue these unsustainable deficits.

We ran a $1.4 trillion deficit last year, and we are on the track to do the same this year. Yesterday, this House passed six appropriations bills in an omnibus package with an almost half-a-trillion-dollar price tag. This is 13 percent more than the spending levels of the prior year; 13 percent more, following a bloated trillion-dollar stimulus spending package.

We all want to return our Nation to economic prosperity, but we can't do it and simultaneously run our Nation into a ditch of fiscal financial irresponsibility.

My 1-year-old grandson, Michael, and his generation will never be able to afford the mountains of debt we are accumulating. Moody's Investment Service has warned us to stop it now or lose our AAA credit rating by 2013. This Congress must get the message. Get the message now. Stop the unnecessary spending.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. HIMES asked and was given permission to address the House for 1 minute.)

Mr. HIMES. Madam Speaker, today when this House passes the Wall Street Reform and Consumer Protection Act, it will take a huge step to the protection of the American citizen, the American taxpayer, and American business. Never again will Wall Street take massive risks with the expectation that they will be bailed out when they fail. Never again will mortgage brokers sell mortgages that they know can't possibly be repaid. Never again will the credit card companies make billions from sowing confusion amongst American consumers.

I have been struck in this debate by how closely what we are doing today mirrors what happened in the 1930s when this Congress created a regulatory structure. The opposition said this would be the end of capitalism, the end of markets. And instead, that reform led to 60 or 70 years of the most intense prosperity the human race has ever seen. Word for word, those charges have been repeated.

They were wrong then, and they are wrong now. What this House does today will be a tremendous step forward for the American people and the American economy.

## WHERE ARE THE JOBS?

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Madam Speaker, this week I stood with my colleagues to introduce a bill to audit stimulus funds. It is time for Congress to demand answers on behalf of the hardworking taxpayers that we represent.

The misnamed stimulus is one of the largest spending bills in our Nation's history, and it is critical that American taxpayers know the facts. This is the people's money, not the government's money. It is wrong that a well-connected Democrat pollster received $6 million to preserve just three jobs when we could provide jobs for dozens of families. I urge Speaker PELOSI to consider our legislation to ensure full accountability of every dollar spent.

I first sent a letter to the President asking him to implement the recovery panel that the stimulus bill provides. The request went unanswered. Therefore, I introduced a national commission to investigate how many jobs have actually been saved or created. Taxpayers should know, Where's the jobs?

In conclusion, God bless our troops, and we will never forget September the 11th in the global war on terrorism.

## JOB CREATION

(Mr. KLEIN of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KLEIN of Florida. Mr. Speaker, creating jobs in south Florida is one of my top priorities in these challenging economic times. We must find ways to create good jobs in our community and ensure that our small businesses are growing and expanding in order to provide opportunities for work in our local neighborhoods.

There are great success stories that we can build on. One example is TBC Corporation, which is located in my district in Palm Beach Gardens, Florida.

After working closely with the Business Development Board of Palm Beach County, TBC, a leading national supplier and retailer of auto tires, will expand their headquarters and data center to create 50 new, high-quality jobs in our community.

Congratulations to the management of TBC. These are the business models we must support and encourage, and I look forward to working with other local businesses to continue to create good jobs in south Florida.

□ 0915

## RECOGNIZING CAPTAIN SEAN WELCH, USMC

(Mr. WITTMAN asked and was given permission to address the House for 1 minute.)

Mr. WITTMAN. Mr. Speaker, I rise today to recognize those men and women who give so freely to serve this great Nation, men such as Captain Sean Welch, United States Marine Corps.

In November, America celebrated 234 years of having a United States Marine Corps that defends our precious freedoms at home and serves as the world's 911 force around the globe. We are fortunate to have men and women who are willing to answer the call of duty, time and again, especially in the midst of two wars.

This year I had the pleasure of having one of America's finest serve in my office as a Congressional Military Fellow, Captain Sean Welch. It has been a privilege and an honor to work beside Captain Welch, who lives in Quantico, Virginia, part of Virginia's First Congressional District.

As Thucydides once said, ''The society that separates its scholars from its warriors will have its thinking done by cowards and its fighting done by fools.'' Fortunately, with men like Captain Sean Welch serving in our Marine Corps, we don't have to worry about that distinction. He flawlessly balances his operational experience with a heavy intellectual rigor and enthusiasm that was clearly apparent during his year on Capitol Hill. Captain Welch serves as a role model and superb example for society and the marines he leads.

So today, I thank Captain Sean Welch for his leadership, his perpetual service to our Nation, and his exceptional service this year as a Congressional Fellow on Capitol Hill.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The SPEAKER pro tempore (Mr. HIMES). Pursuant to House Resolution 964 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 4173.

□ 0916

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, with Ms. EDWARDS of Maryland in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Thursday, December 10, 2009, amendments en bloc offered by the gentleman from Massachusetts (Mr. FRANK) had been disposed of.

AMENDMENT NO. 15 OFFERED BY MR. COHEN

The Acting CHAIR. It is now in order to consider amendment No. 15 printed in House Report 111–370.

Mr. COHEN. Madam Chair, I rise to offer the amendment to the body that is at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. COHEN:

Page 1126, line 6, strike ''subsections'' and insert ''subsection''.

Page 1126, strike lines 15 through 25.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Tennessee (Mr. COHEN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Tennessee.

Mr. COHEN. I yield myself as much time as I may consume.

I want to thank Chairman FRANK for working with me to include this language in the Wall Street Reform and Consumer Protection Act of 2009.

This amendment would strip a provision permitting the Securities and Exchange Commission to delegate regulation of investment advisers to the Financial Industry Regulatory Authority.

In its present form, the bill would give FINRA sweeping rule-making authority over investment advisers which has been under the sole domain of the governmental regulatory agencies. This far-reaching provision would extend FINRA's jurisdiction to Federally registered investment advisory firms that manage almost 80 percent of all advisory firms' assets under management.

FINRA does not have the necessary expertise or experience with investment advisers or the Investment Advisers Act to do the job, and the SEC is

best positioned to oversee the investment advisers under the Investment Advisers Act.

There is inherent conflict of interest in having a self-regulatory group that funds this agency and has always been on the side of broker dealers. We cannot afford to outsource key regulating functions to self-regulating organizations that act solely in the best interest of their clients.

In a speech earlier this year, SEC Commissioner Luis Aguilar noted his opposition to establishing a self-regulatory organization for investment advisers because the ''SEC should not outsource its mission'' and because the SEC ''is the only securities regulator with the necessary experience in dealing with a principles-based regime.''

I'm concerned that the high level of investor protection provided under the Advisers Act fiduciary duty would be diminished if FINRA were to obtain the additional authority. We should not expend the authority of FINRA to the investment advisory profession.

Again, I urge the passage of this amendment which would keep the SEC as the proper, independent regulator of investment advisers.

I reserve the balance of my time.

Mr. BACHUS. I rise to claim the time in opposition.

Let me say to the gentleman from Tennessee, let me explain the purpose behind the provision which your amendment seeks to strike. And I say that I would be glad to work with the chairman and with the Member at this time, striking the provision that I inserted in the committee that you objected to, and won't ask for a recorded vote.

So let me explain the background behind this amendment, and I think if we can all work together, I think we can make investors safer and make a better system.

If the body will recall, and the chairman, on December 12 of last year, about a year ago, Bernie Madoff was arrested for committing the largest financial fraud in the history of the country. It was a tremendous scam—a $65 million Ponzi scheme which defrauded nonprofits, universities, and pension funds, and wiped out the savings of literally tens of thousands of families and citizens.

Now, to do this, Bernie Madoff operated two separate entities: one was a broker dealer and one was an investment adviser. The fraud occurred with the investor adviser. That is where the fraud occurred.

The investment adviser was registered with the SEC. The investment adviser, Madoff's investor adviser, was subject to examination by the SEC, but I would point out to the chairman of the full committee and the gentleman from Tennessee they never examined the investor adviser. They never examined it.

Madoff operated a broker-dealer in the same premises and under the same name. And it was examined, was subject to examination by the SEC and by FINRA. I was saying let FINRA go ahead and examine the investment advisers, these dual operations where you have both. FINRA inspected the broker-dealer at least every other year, but the fraud didn't occur there; it occurred in the investment adviser.

FINRA lacked the authority to go in and examine the investor adviser. They couldn't examine it. And my provision I put in the committee said let them be able to, as they examine the broker-dealer, let them go in and look at the books of the investment adviser if you're operating a dual operation. Had they had the right, they would have gone in and they would have discovered this fraud. The SEC, which had the right, never did it.

Now, as I said earlier, maybe there's another solution. The SEC has said we don't want FINRA taking over our jurisdiction. What I'd like to say is, let's make sure the SEC starts doing their job. Let's make sure that they start examining these investment advisers. Someone needs to. The average investment adviser is only examined once every 10 years. Bernie Madoff's investment adviser was never examined. It's the kind of gap in regulation that causes disasters. It causes scams, it causes Bernie Madoffs of the world to get along for decades.

That is why I introduced this amendment, the provision, which we're now striking.

Now, going forward, we at least need to look at this. We need to know that there are 500 or 600 of these investment advisers and broker-dealers, dual operations. And we need to make clear that the SEC, somewhere, that they have the authority to examine both investment advisers and broker-dealers. If they want to perform that mission—and I know one thing the chairman has done; he has added more money for the SEC. I think that is part of the answer, but I think this committee, the Congress, as we go forward, needs to make sure they do their job. And there was a monumental failure of the SEC, and if they don't do their job or we find they don't and they have the resources, let's give it to someone else.

I yield back the remainder of my time.

Mr. COHEN. I want to thank the gentleman for working with us on the amendment, and I'd like to yield as much time as he needs to the chairman of the full committee, the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. I thank both of my colleagues. And the ranking member is exactly right in the concerns he has expressed, and that is why at the committee, the chairman of the subcommittee—Mr. KANJORSKI and I tentatively agreed to this—we later heard some questions raised, in particular, someone I think for whom we all had an amount of respect, Denise Floyd Crawford, who's the longtime Texas securities administrator who really goes back four or five Texas administrations in a bipartisan way. And on behalf of the North American Securities Administration Association, she raised some concerns. And they were worried that this might, at some point, be too much of a delegation and therefore—and I appreciate the gentleman's comments—we agree with him that we do want to—our goal is to buff up investor protection.

Clearly, there's a role for FINRA. I think we may have gone a little too far in what we accepted in committee. But we're not talking about getting rid of it altogether. So I appreciate the reasonableness of what the gentleman from Alabama has said. It will be our role next year, if this bill passes, to monitor the SEC. I look forward to oversight hearings to make sure they're using their authority. And particularly, how best to allow the SEC to draw on the resources of FINRA will be high on our agenda.

Mr. BACHUS. Will the gentleman yield?

Mr. FRANK. Yes.

Mr. BACHUS. I appreciate that, and I think that is a logical solution to that. And at this time I will support the gentleman's amendment to strike the provision. And as I said when I brought this provision up, I wanted to highlight the fact that this is how Bernie Madoff, you know, he got away with operating these two operations on the same premises, and we need to do the—the regulators need to do a better job, someone, of being able to look across those operations.

Mr. COHEN. I would just like to thank again the gentleman from Alabama. I know it's difficult for him to work with us on this because he is the champion of the SEC, the Crimson Tide of Alabama.

With that, I would like to urge passage of the amendment.

I yield back the remainder of the time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Tennessee (Mr. COHEN).

The amendment was agreed to.

AMENDMENT NO. 16 OFFERED BY MR. PETERS

The Acting CHAIR. It is now in order to consider amendment No. 16 printed in House Report 111–370.

Mr. PETERS. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 16 offered by Mr. PETERS:

Page 402, after line 18, insert the following subparagraph:

(E) ADDITIONAL AUTHORIZED ASSESSMENTS.—The Corporation is authorized to conduct risk-based assessments on financial companies in such amount and manner and subject to terms and conditions that the Corporation determines, with the concurrence of the Secretary of the Treasury and the Federal Reserve Board, are necessary to pay any shortfall in the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008 that would add to the deficit or national debt, as identified by the Director of the Office of Management and Budget, in consultation with the

Director of the Congressional Budget Office pursuant to section 134 of such Act (12 U.S.C. § 5239).

The Acting CHAIRMAN. Pursuant to House Resolution 964, the gentleman from Michigan (Mr. PETERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. PETERS. I yield myself such time as I may consume.

Today we are debating legislation that will end the ''too big to fail'' doctrine and provide a mechanism for ensuring that in the future, taxpayers will not be asked to foot the bill to clean up Wall Street's mistakes. My amendment improves this legislation by ensuring that taxpayers are not asked to foot the bill for Wall Street's past mistakes as well.

My amendment will firmly establish that the financial industry—not taxpayers—will be responsible for making up any TARP shortfalls, and the TARP program will not add to our deficits or our national debt.

□ 0930

Section 134 of the Emergency Economic Stabilization Act of 2008 requires the President to identify a mechanism for recovering any shortfalls in TARP funds after 5 years so as not to increase the budget deficit or national debt. However, the mechanism for recouping any shortfall is not identified.

H.R. 4173 already empowers the FDIC to make risk-based assessments on the Nation's largest and most systemically risky financial institutions that will be used to create a Systemic Dissolution Fund used to seize and unwind any failed nonbank financial institution in the future, ensuring that there will be no more ad hoc bailouts of too-big-to-fail institutions.

My amendment would give the FDIC authority to make additional assessments to these same large firms, whose excessive risk-taking caused the current financial crisis, and use those assessments to pay off any TARP shortfalls and ensure that the taxpayers are made whole.

My amendment gives the American taxpayer certainty that all TARP funds will be recouped from the large financial companies that caused this financial crisis. It will allow Congress to show that we have a plan in place for the recoupment of any shortfall, consistent with the promises made during the debate over the Emergency Economic Stabilization Act. It will also ensure that the American public understands that we are not turning the page on TARP, but instead we have a clear and decisive plan for making sure that taxpayers are made whole.

Madam Chair, I reserve the balance of my time.

Mr. HENSARLING. I rise to claim time in opposition.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. I yield myself as much time as I may consume. I rise in opposition to the gentleman's amendment.

If this body really cares about protecting the taxpayer against losses in TARP, they will have an opportunity to show it later today, and that is, vote to end the TARP program. Now we could have a debate about what TARP was, but the more relevant debate is what TARP is. And today, TARP is nothing more than $700 billion of walking-around money for the administration. It's a $700 billion revolving bailout fund to advance the administration's political, social and economic agenda.

And if you're concerned about protecting the taxpayer, why would you have a provision that further raids TARP for yet more taxpayer-funded foreclosure mitigation programs which have proven to be abject failures? You spend more taxpayer money on these programs, and foreclosure rates continue to climb and climb and climb. So if you're really serious about protecting taxpayers, put your vote where your sentiment is and vote later today to simply end the TARP program and end the bailouts. But given that the whole reason for being for this bill is a perpetual Wall Street bailout, I suspect, unfortunately, that will not occur.

The second point I would make, Madam Chair, is some of the companies that received funds under the capital purchase program have now repaid them back with interest. So now we are in the position to tax companies that have proven successful and paid back their funds, tax them for failing companies that didn't pay back theirs. Chrysler and GM received funds under TARP and Ford didn't. So under this, I suppose that we could assess Ford a tax to pay for losses the taxpayers will incur on GM and Chrysler. And we know that GM and Chrysler were defined as ''financial institutions'' under the TARP statute; therefore, Ford could be taxed under the gentleman's amendment. Is that smart? Is that fair? The answer is no.

This is yet another tax to go on capital. You can't have capitalism without capital. And so we have a $150 billion tax for the revolving bailout fund; we have an unlimited tax by the new czar to ban and ration consumer credit products that could touch small businesses throughout our Nation. Every time you increase the cost of taxes on capital, you get less lending, you get less credit, more expensive credit. And less credit is fewer jobs.

I would think at a time when our Nation has the highest unemployment rate in a generation that this is an institution that would be trying to create more jobs, trying to create more capital, trying to have small businesses access pools of capital, and all we do is see more legislation and more amendments to make capital less available and more expensive to our small businesses.

This amendment must be rejected.

I reserve the balance of my time.

Mr. PETERS. Madam Chair, I would like to yield 1½ minutes to the gentleman from Michigan (Mr. SCHAUER).

Mr. SCHAUER. Madam Chair, I rise in strong support of the Peters of Michigan amendment and the underlying legislation to reform our financial regulatory system.

For many years, we were told that what is good for Wall Street is good for Main Street, that the benefits are somehow supposed to trickle down. But the only thing the people of Michigan have seen is their hopes and dreams trickle out of reach. Wall Street's collapse has left my State with a 15 percent unemployment rate.

Last fall, Wall Street said they needed to borrow $700 billion from taxpayers to paper over their losses. Michiganders were forced to open up their wallets to support big Wall Street banks. Unfortunately, these big banks have decided to stop lending to Michigan homeowners and Michigan businesses. Employers can't get loans they need to bring people back to work.

This week, the Treasury said that TARP has performed better than expected, but they still expect to lose taxpayer dollars. We still do not have a guarantee that the bailed-out financial industry will actually repay taxpayers for their loans.

Mr. PETERS has offered an excellent amendment to ensure American taxpayers will get their money back and that those that created this mess will pick up the tab. This amendment enables the FDIC to make additional assessments on the Nation's largest, most systemically risky financial institutions to pay back this TARP money. This amendment finally puts in place a plan for Wall Street to pay back its loan. This is common sense. Those institutions responsible for the collapse should at least be forced to repay their loans.

Mr. HENSARLING. I continue to reserve my time.

Mr. PETERS. Madam Chair, I would like to yield 1½ minutes to the gentleman from Virginia (Mr. CONNOLLY).

Mr. CONNOLLY of Virginia. Madam Chair, with today's action, the House will enact the most significant reform of our Nation's financial system since the Great Depression. These are not decisions we take lightly, but the prolonged recession and the near collapse of the financial market in the fall of 2008 have compelled us to respond.

It will also end the era of taxpayer-funded bailouts. Madam Chairwoman, this amendment offered by my friend and colleague, Mr. PETERS of Michigan, seeks to build on this legislation and will authorize the FDIC to make further assessments on the financial industry to ensure every penny of the TARP loans made to the banks is repaid and help reduce our Nation's debt and burden on the taxpayers.

I urge adoption of the amendment, Madam Chairwoman.

Mr. HENSARLING. I continue to reserve.

The Acting CHAIR. The gentleman from Michigan has 30 seconds remaining.

Mr. PETERS. Madam Chair, the amendment before us is a commonsense attempt to make sure that we recoup to the taxpayers the money that has been loaned to the financial industry. The gentleman from Texas mentions we should just end TARP, but that doesn't relieve us of the fact that we've got $140 billion that needs to be paid back so that it's not a liability on the taxpayers.

This is a way in which we can recoup the money from the financial institutions, the very institutions that were responsible for bringing this financial meltdown to our country and the problems that have impacted my State and States all across this country. This is a commonsense approach, and I urge adoption.

The Acting CHAIR. The time of the gentleman has expired.

Mr. HENSARLING. Madam Chair, what is common sense is to terminate TARP—stop it before it can spend again. And I hear all this wonderful rhetoric about, well, somehow we are going to tax Wall Street for all of this. But look at the TARP program. Look at the taxpayer-funded foreclosure mitigation plans, all of which have been abject failures, where the taxpayer receives zero—zero—of his money back.

And so this, again, is just one more way to assess a greater tax, a greater cost on capital when small businesses have seen their credit lines shrunk, withdrawn. Jobs are being lost all over the Nation. And so here is one more idea to, frankly, keep TARP going. And, again, if people want to put their vote where their sentiment is, they will have an opportunity to do it later today. It's a fundamental difference between the two approaches; and that is, our friends on the other side of the aisle still want a perpetual bailout.

As I have said earlier, if there was truth in advertising, the bill before us would be named the ''Permanent Wall Street Bailout and Increase Job Losses Through Credit Rationing Act of 2009.''

The best way to protect the taxpayer is to end TARP and stop the grab for other programs, not to increase taxes, yet again, on capital that is vitally needed for our small businesses in order to create more jobs.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. PETERS).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. HENSARLING. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 17 OFFERED BY MR. WATT

The Acting CHAIR. It is now in order to consider amendment No. 17 printed in House Report 111–370.

Mr. WATT. I rise to offer the amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. WATT:

Page 772, strike line 12 and all that follows through page 773, line 22, and insert the following:

(1) IN GENERAL.—The Director and the Agency may not exercise any rulemaking, supervisory, enforcement, or any other authority, including authority to order assessments, over a motor vehicle dealer that is primarily engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.

(2) CERTAIN ACTIVITIES EXCEPTED.—Paragraph (1) shall not apply to—

(A) any motor vehicle dealer to the extent that such motor vehicle dealer engages in any financial activity other than extending credit or leasing exclusively for the purpose of enabling a consumer to purchase, lease, rent, repair, refurbish, maintain, or service a motor vehicle from that motor vehicle dealer; or

(B) any credit transaction involving a person who operates a line of business that involves the extension of retail credit or retail leases involving motor vehicles, and in which—

(i) the extension of retail credit or retail leases is provided directly to consumers; and

(ii) the contracts governing such extensions of retail credit or retail leases are not assigned to a third party finance or leasing source, except on a de minimis basis.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. WATT. Madam Chair, I yield myself 3½ minutes.

Madam Chair, let me say at the outset it is my intention at the end of a short discussion to ask unanimous consent to withdraw the amendment, but I thought it would be enlightening to colleagues and to whoever else might be listening at this time in the morning to talk about some of the practical problems that you have even when there's broad agreement on an issue.

And I will describe the process. Both Mr. CAMPBELL, who is a member of the committee, and I agree that automobile dealers ought to be exempt in their primary duties from the CFPA, the Consumer Financial Protection Agency supervision and what have you. There was broad bipartisan and philosophical agreement on that general proposition in the committee when Mr. CAMPBELL offered his amendment, and there was broad agreement that there were some practical problems with the way the amendment was written; and the chairman delegated to me and to Mr. CAMPBELL the responsibility to try to find the right language. We set about trying to do that, and we have been diligently trying to do that.

Then the practical problems intervened. Other people get their fingers in the pot and suggest different issues that need to be resolved. Mr. CAMPBELL and I, on a Friday night, with him in California and me in North Carolina on our cell phones, have a conversation, and we are right at the verge of reaching an agreement, we think, and we are quibbling about words. Then he gets called away to the USC football game the next day, and I get called away the following day to the Carolina Panthers football game. And then we are right up against the deadline.

Then we find out that the chairman has offered a manager's amendment that deals with part of the problem, but not all of it. We both submitted amendments to the Rules Committee. Mr. CAMPBELL withdraws his amendment, mine is still standing, and we are still talking about the amendment.

And then the automobile dealers, because they don't like my amendment, decide that they need to lobby against it and make it sound as if I'm opposed to what I was in favor of all along.

□ 0945

So we've been at this for a long time.

And finally, yesterday, Mr. CAMPBELL and I sat down and talked again and decided that we should not allow the perfect to be the enemy of the good. What we have in the bill with the manager's amendment substantially advances the process. We are not the end of the process anyway. The Senate is going to have to deal with this. And both of us are still intent on the philosophy that automobile dealers ought to be exempt from CFPA. We agree on that. And so here we are, and we thought it would be helpful to have this dialogue.

With that, I reserve the balance of my time.

Mr. CAMPBELL. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from California is recognized for 5 minutes.

Mr. CAMPBELL. I yield myself such time as I may consume.

You know, maybe I shouldn't have gone to that USC football game because they lost, and so that was rather depressing. I don't know how the Carolina Panthers did, but——

Mr. WATT. They lost, too.

Mr. CAMPBELL. They lost, too. All right. Well, then, both of us didn't have a particularly good weekend.

But as the gentleman from North Carolina (Mr. WATT) described, we've had discussions on this thing, and he has been very helpful and worked very constructively on this. In fact, the language that is in the bill now reflects a number of suggestions that the gentleman from North Carolina made which clarified some things that were, frankly, confusing and conflicting in the bill. So I appreciate Mr. WATT's constructive work on this and all that he has done with this.

And yes, he's right, sometimes these things get very complicated and you

sit down and you try and figure out, well, what exactly does this say and are we saying the right thing? But I think we now have reached agreement that what is in the bill is the right thing.

There is broad agreement, as the gentleman from North Carolina suggested, with myself, with him, and broad agreement in this House that automobile dealers, in the normal course of their business, do not lend money and are not financial institutions and should not be subject to the additional regulation of the CFPA. If, however, they do lend money and act like financial institutions, then they will be subject. That is what this bill says. It is the right thing to say, and I think we have reached a good conclusion on this.

I thank the gentleman from North Carolina very much for his very good and constructive work on this.

Madam Chair, I reserve the balance of my time.

Mr. WATT. Madam Chair, I yield 1 minute to the Chair of the committee.

Mr. FRANK of Massachusetts. Madam Chair, I am very appreciative that two of the most constructive members of the committee, the gentleman from North Carolina and the gentleman from California, have been working together on this.

We have a mix here of policy difference, but then also some technical questions. Clearly, there was a difference on whether or not auto dealers should get some kind of exemption. The majority of the committee felt that the auto dealer situation was such—I would think particularly because of the stresses they have unfairly been recently subjected to by the chaos of the auto industry—that they did deserve some.

Once that question was resolved—I was in the minority on that, but it was resolved that they did—there were then technical issues about how to work it out. I am very pleased that two of our most thoughtful members are continuing a collaboration on this.

The manager's amendment had some improvement in this situation that was mutually agreed to, and there is room, I believe, for further conversation and refinement. And so I just want to express, first, my appreciation, and secondly, my willingness, to the extent my role as Chair of the committee would be relevant, to try to effectuate what they work out.

Mr. CAMPBELL. Madam Chair, I continue to reserve.

Mr. WATT. Madam Chair, I will just say in closing that one of the other wonderful things that has come out of this is that prior to this, Mr. CAMPBELL and I had never really had an opportunity to roll up our sleeves and work on issues together. It has been a joy to work with him, and he has been very constructive.

I want to just reserve myself enough time to ask unanimous consent to withdraw the amendment, but I don't want to do that before he has the last word.

Mr. CAMPBELL. And I have enjoyed working with you as well. I am glad that we are able to be where we are on this and look forward to working in the future as the bill moves forward.

Madam Chair, I yield back the balance of my time.

Mr. WATT. Madam Chair, I ask unanimous consent to withdraw the amendment.

The Acting CHAIR. Without objection, the amendment is withdrawn.

There was no objection.

AMENDMENT NO. 18 OFFERED BY MR. KANJORSKI

The Acting CHAIR. It is now in order to consider amendment No. 18 printed in House Report 111–370.

Mr. KANJORSKI. I have an amendment at the desk as the designee of the gentleman from Massachusetts.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 18 offered by Mr. KANJORSKI:

Strike section 6005 and redesignate the subsequent sections in subtitle B of title V and conform the table of contents in section 2 accordingly.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Pennsylvania (Mr. KANJORSKI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. KANJORSKI. Madam Chair, I rise in support of this amendment.

Nationally Recognized Statistical Rating Organizations are those credit rating agencies that are registered with the Securities and Exchange Commission and, therefore, regulated. Most often, the phrase is shortened to its initials, NRSRO; however, in formal contracts and statutes, the words are spelled out and each word matters. Unfortunately, an amendment to change one of these words was inadvertently accepted during the markup. We switched out the word ''recognized'' for the word ''registered.'' If enacted into law, such a change would put thousands of contracts in default and upset numerous Federal and State laws, rules, and regulations.

Although well intended, such a seemingly minuscule change could have disastrous unintended consequences. We must not put contracts in default or undermine other laws and regulations. Therefore, I urge my colleagues to support this amendment and reinstate the correct word in this important legislation.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. Madam Chair, I rise to claim time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. I yield myself 4 minutes.

I thank the gentleman from Pennsylvania for his amendment, but more than that, I should say I thank the gentleman for addressing this larger issue of CRAs for a number of months. I have claimed time in opposition just on the amendment because I think we can probably work this out in a different way.

The gentleman and I worked for a long time trying to address the issue of the credit rating agencies because both of us realize that when you lay out the reasons why we are in this financial mess that we're in right now, we may disagree on this point or that point as to exactly how we got here, but both of us, I believe, came to the conclusion that CRAs played a huge, huge part to bring us to where we are today with this financial mess. And the reason it did was because so many people failed to exercise what we would call proper market discipline when they made their investments, whether that was a small investor, a middle-size investor, or even the so-called ''knowledgeable'' investors on Wall Street failed to use what, in normal times, they would inherently have inside of them to say, What is the proper decisionmaking that I should make before I make this investment or that investment? What risks should I take here or there? And why was that, though, is the question.

Well, we looked at a whole bunch of things and we tried to come up with changes to the regulations of CRAs, the credit rating agencies, and we made a lot of changes that were improvements. But I think we came down to one point, that there was too much reliance upon credit rating agencies. Just because a CRA came out and said that on this particular security or this particular financial product that was rated AAA, regardless of what was actually in the package, regardless of the fact that maybe it was just a compilation of subprime mortgages with no likelihood whatsoever that they would ever be paid off, they got the AAA's seal of approval, and people invested in it. And, of course, the rest is history.

We look at it, one of the reasons why we think they got the seal of approval and then why investors looked at that and said that was okay was because they had the seal of approval from the Federal Government. The CRAs were listed as NRSROs, Nationally Recognized Statistical Rating Organizations. So the investor, large or small, sophisticated or not, said, Well, if the Federal Government is going to put its imprimatur on these organizations, on these CRAs by saying they are nationally recognized, if the Federal Government is going to put its stamp of approval, let's say their Good Housekeeping Seal of Approval on these entities, then they must be okay and the decisions they are making must be okay. So that is what led to their decisions.

That is why, in committee, Ranking Member BACHUS proposed a change to this. He changed it from ''nationally recognized'' to ''nationally registered,'' merely that these entities were registered. No seal of approval, no stamp of the Good Housekeeping Seal of Approval, just that they had gone through

the motions and had simply registered with the government as being a nationally registered statistical rating organization. That is why I think it made good sense to take away that seal of approval, and that is why I also believe that this legislation, this amendment in committee passed in a bipartisan manner out of committee.

Now, I recognize that I am actually on the floor now, oddly enough, defending the actions of the committee here to a change. And I understand the potential problems, but I would suggest that perhaps other things could be done other than just stripping this out and going back to the way it was before. I would suggest that we leave it as ''nationally registered statistical rating organizations,'' and as we go forward through the process, if we find—maybe it's minutia, maybe it's not, as far as some States' regulations or other Federal regulations that refer to this. I bet you there is a better, simpler way to just correspond this back for existing contracts and what have you, and I would look forward to working with the chairman and the other committee's chairman to solve those problems in the future.

Mr. KANJORSKI. Madam Chair, I yield such time as he may require to the chairman.

Mr. FRANK of Massachusetts. First, I would say to my friend from New Jersey, I very much agree with what he said about credit rating agencies. For the record, I would like to make an assertion I know he agrees with, that when he talks about our agreement on the CRAs and the role of the CRAs, we are talking about the credit rating agencies, not the Community Reinvestment Act, the other CRA with which we deal. Sometimes people don't pay full attention, so I don't want to get anybody too agitated.

Yes, he is exactly right. He and I, in fact, collaborated on the legislation to remove the statutory assertion. And I think he is also correct, we fully agree—I think there is virtually unanimity on it—with the purpose he articulated, tell the average investor to pay attention on your own, don't rely on the rating agencies, don't subcontract your judgment to them.

Frankly, I am frustrated. I would hope that people out in the economy would take advantage of the full legal rights they have to create some buy side rating agencies. I think that would be very helpful. We checked. There are no obstacles to doing it. I had some frustration that we weren't able to do more. I think we have done as much as anybody could think of. I've seen some newspaper articles that said, Why didn't you do more? But they were, not surprisingly, absent of any suggestion. So, yes, I think it would be better if we had buy side rating agencies. In the interim, we have at least told people, use your own judgment.

But as the gentleman acknowledged—and I think we can work this out—going forward, the problem we got was from a number of States and private institutions that have imbedded in their statutes the old language. And I am pleased the gentleman said let's work together. I think it would mean meeting with various State agencies and the pension funds to see if there is some legislative fix we could adopt short of going back to the old name, because I agree with him as to the purpose of changing the name so that we can alleviate this problem there.

So with that, I would be willing to say there is no need for the amendment, given that we have an agreement. We will ask our hardworking and very creative staffs that can often work very well together to meet with those who have raised this issue to see if there is something else we could do that would meet their concern so they wouldn't have to all amend their statutes, et cetera. And with that, I think we have come to a conceptual agreement. And as is often the case, we, the Members, will come to a conceptual agreement and the staff will do all the hard work of making it a reality.

Mr. KANJORSKI. Madam Chair, I reserve the balance of my time.

The Acting CHAIR. The gentleman from New Jersey has 1 minute remaining.

Mr. GARRETT of New Jersey. I appreciate the chairman's comments and look forward to seeing how this can be dealt with if this bill eventually does pass and goes over to the Senate and into the conference.

Mr. FRANK of Massachusetts. Would the gentleman yield?

Mr. GARRETT of New Jersey. Yes.

Mr. FRANK of Massachusetts. I would just say no one can dictate to anyone, but if there were to be a ''no'' on the voice vote, I think that would be a reasonable end to this particular discussion and we could then continue on the level we talked about.

□ 1000

Mr. GARRETT of New Jersey. There is that comment, and also there is the understanding that we are not talking about the other CRA. Although, if we could make a UC, and if we could put that as being a cause—no, I guess we can't do that. That's a bridge too far.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI).

The amendment was rejected.

AMENDMENT NO. 19 OFFERED BY MR. MARSHALL

The Acting CHAIR. It is now in order to consider amendment No. 19 printed in House Report 111–370.

Mr. MARSHALL. I rise as the designee of the gentleman from Michigan (Mr. CONYERS).

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. MARSHALL:

At the end of the bill, insert the following (and make such technical and conforming changes as may be appropriate):

**TITLE VII—PREVENTION OF MORTGAGE FORECLOSURES**

**Subtitle A—Modification of Residential Mortgages**

**SEC. 9001. DEFINITION.**

Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following (and make such technical and conforming changes as may be appropriate):

''(43A) The term 'qualified loan modification' means a loan modification agreement made in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, that—

''(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

''(B) requires no fees or charges to be paid by the debtor in order to obtain such modification; and

''(C) permits the debtor to continue to make payments under the modification agreement notwithstanding the filing of a case under this title, as if such case had not been filed.''.

**SEC. 9002. ELIGIBILITY FOR RELIEF.**

Section 109 of title 11, United States Code, is amended—

(1) by adding at the end of subsection (e) the following: ''For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of—

''(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection; or

''(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection.'', and

(2) by adding at the end of subsection (h) the following:

''(5) Notwithstanding the 180-day period specified in paragraph (1), with respect to a debtor in a case under chapter 13 who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence, the requirements of paragraph (1) shall be considered to be satisfied if the debtor satisfies such requirements not later than the expiration of the 30-day period beginning on the date of the filing of the petition.''.

**SEC. 9003. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.**

Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking ''or'' at the end,

(2) in paragraph (9) by striking the period at the end and inserting ''; or'', and

(3) by adding at the end the following:

''(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission

under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this paragraph shall be construed to modify, impair, or supersede any other right of the debtor.''.

**SEC. 9004. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

Section 1322 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (11) as paragraph (12),

(B) in paragraph (10) by striking ''and'' at the end, and

(C) by inserting after paragraph (10) the following:

''(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim (and the rights of the holder of any claim secured by a subordinate security interest in such residence)—

''(A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

''(B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

''(C) by modifying the terms and conditions of such loan—

''(i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

''(ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table entitled 'Average Prime Offer Rates—Fixed', plus a reasonable premium for risk; and

''(D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and'', and

(2) by adding at the end the following:

''(g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds—

''(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 90 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 70 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 50 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 30 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

''(5) if such residence is sold in the 5th year occurring after the effective date of the plan, 10 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

''(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

''(1) in a case commenced under this chapter after the expiration of the 30-day period beginning on the effective date of this subsection, unless—

''(A) the debtor certifies that the debtor—

''(i) not less than 30 days before the commencement of the case, contacted the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim;

''(ii) provided the holder of the claim (or the entity collecting payments on behalf of such holder) a written statement of the debtor's current income, expenses, and debt substantially conforming with the schedules required under section 521(a) or such other form as is promulgated by the Judicial Conference of the United States for such purpose; and

''(iii) considered any qualified loan modification offered to the debtor by the holder of the claim (or the entity collecting payments on behalf of such holder); or

''(B) a foreclosure sale is scheduled to occur on a date in the 30-day period beginning on the date the case is commenced;

''(2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before—

''(A) filing a plan under section 1321 that contains a modification under the authority of subsection (b)(11); or

''(B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

''(i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such residence on the date such value is determined and, if the issue of value is contested, the court shall determine such value in accordance with the appraisal rules used by the Federal Housing Administration.''.

**SEC. 9005. COMBATING EXCESSIVE FEES.**

Section 1322(c) of title 11, United States Code, is amended—

(1) in paragraph (1) by striking ''and'' at the end,

(2) in paragraph (2) by striking the period at the end and inserting a semicolon, and

(3) by adding at the end the following:

''(3) the debtor, the debtor's property, and property of the estate are not liable for a fee, cost, or charge that is incurred while the case is pending and arises from a debt that is secured by the debtor's principal residence except to the extent that—

''(A) the holder of the claim for such debt files with the court and serves on the trustee, the debtor, and the debtor's attorney (annually or, in order to permit filing consistent with clause (ii), at such more frequent periodicity as the court determines necessary) notice of such fee, cost, or charge before the earlier of—

''(i) 1 year after such fee, cost, or charge is incurred; or

''(ii) 60 days before the closing of the case; and

''(B) such fee, cost, or charge—

''(i) is lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement; and

''(ii) is secured by property the value of which is greater than the amount of such claim, including such fee, cost, or charge;

''(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) or, if the violation occurs before the date of discharge, of section 362(a); and

''(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.''.

**SEC. 9006. CONFIRMATION OF PLAN.**

(a) Section 1325(a) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) strike ''subsection (b)'' and insert ''subsections (b) and (d)''.

(2) in paragraph (5)—

(A) by inserting ''except as otherwise provided in section 1322(b)(11),'' after ''(5)'', and

(B) in subparagraph (B)(iii)(I) by inserting ''(including payments of a claim modified under section 1322(b)(11))'' after ''payments'' the 1st place it appears,

(3) in paragraph (8) by striking ''and'' at the end,

(4) in paragraph (9) by striking the period at the end and inserting a semicolon, and

(5) by inserting after paragraph (9) the following:

''(10) notwithstanding subclause (I) of paragraph (5)(B)(i), whenever the plan modifies a claim in accordance with section 1322(b)(11), the holder of a claim whose rights are modified pursuant to section 1322(b)(11) shall retain the lien until the later of—

''(A) the payment of such holder's allowed secured claim; or

''(B) completion of all payments under the plan (or, if applicable, receipt of a discharge under section 1328(b)); and

''(11) whenever the plan modifies a claim in accordance with section 1322(b)(11), the court finds that such modification is in good faith (Lack of good faith exists if the debtor has no need for relief under this paragraph because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a reduction of the principal amount of the loan resulting from a modification

made under the authority of section 1322(b)(11) is made in good faith, the court shall consider whether the holder of such claim (or the entity collecting payments on behalf of such holder) has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing such principal amount.) and does not find that the debtor has been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to a modified claim.''.

(b) Section 1325 of title 11, United States Code, is amended by adding at the end the following (and make such technical and conforming changes as may be appropriate):

''(d) Notwithstanding section 1322(b)(11)(C)(ii), the court, on request of the debtor or the holder of a claim secured by a senior security interest in the debtor's principal residence, may confirm a plan proposing a reduction in the interest rate on the loan secured by such security interest and that does not reduce the principal, provided the total monthly mortgage payment is reduced to a percentage of the debtor's income in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, if, taking into account the debtor's financial situation, after allowance of expenses that would be permitted for a debtor under this chapter subject to paragraph (3) of subsection (b), regardless of whether the debtor is otherwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in this chapter and thereafter, the debtor would be able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal.''.

**SEC. 9007. DISCHARGE.**

Section 1328(a) of title 11, United States Code, is amended—

(1) by inserting ''(other than payments to holders of claims whose rights are modified under section 1322(b)(11))'' after ''paid'', and

(2) in paragraph (1) by inserting ''or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)'' after ''1322(b)(5)''.

**SEC. 9008. STANDING TRUSTEE FEES.**

(a) AMENDMENT TO TITLE 28.—Section 586(e)(1)(B)(i) of title 28, United States Code, is amended—

(1) by inserting ''(I) except as provided in subparagraph (II)'' after ''(i)'',

(2) by striking ''or'' at the end and inserting ''and'', and

(3) by adding at the end the following:

''(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.''.

(b) CONFORMING PROVISION.—The amendments made by this section shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3121) apply.

**SEC. 9009. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subtitle shall apply with respect to cases commenced under title 11 of the United States Code before, on, or after the date of the enactment of this Act.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to cases closed under title 11 of the United States Code as of the date of the enactment of this Act that are neither pending on appeal in, nor appealable to, any court of the United States.

**SEC. 9010. GAO STUDY.**

The Comptroller General shall carry out a study, and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than 2 years after the date of the enactment of this Act a report containing—

(1) the results of such study of—

(A) the number of debtors who filed, during the 1-year period beginning on the date of the enactment of this Act, cases under chapter 13 of title 11 of the United States Code for the purpose of restructuring their principal residence mortgages,

(B) the number of mortgages restructured under the amendments made by this subtitle that subsequently resulted in default and foreclosure,

(C) a comparison between the effectiveness of mortgages restructured under non-judicial voluntary mortgage modification programs and mortgages restructured under the amendments made by this subtitle,

(D) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were appealed,

(E) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were overturned on appeal, and

(F) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under the amendments made by this subtitle, and

(2) a recommendation as to whether such amendments should be amended to include a sunset clause.

**SEC. 9011. REPORT TO CONGRESS.**

Not later than 18 months after the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Housing Administration, shall submit to the Congress, a report containing—

(1) a comprehensive review of the effects of the amendments made by this subtitle on bankruptcy courts,

(2) a survey of whether the program should limit the types of homeowners eligible for the program, and

(3) a recommendation on whether such amendments should remain in effect.

## Subtitle B—Related Mortgage Modification Provisions

**SEC. 9021. ADJUSTMENTS AS A RESULT OF MODIFICATION IN BANKRUPTCY OF HOUSING LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.**

(a) IN GENERAL.—Section 3732 of title 38, United States Code, is amended—

(1) in subsection (a)—

(A) by redesignating paragraph (2) as subparagraph (A) of paragraph (2), and

(2) by inserting after subparagraph (A) the following new subparagraph:

''(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, United States Code, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11, United States Code, plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.''.

(b) MATURITY OF HOUSING LOANS.—Paragraph (1) of section (d) of section 3703 of title 38, United States Code, is amended by inserting ''at the time of origination'' after ''loan''.

(c) IMPLEMENTATION.—The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

**SEC. 9022. PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.**

(a) IN GENERAL.—Subsection (a) of section 204 of the National Housing Act (12 U.S.C. 1710(a)) is amended—

(1) in paragraph (1), by adding at the end the following new subparagraph:

''(E) MODIFICATION OF MORTGAGE IN BANKRUPTCY.—

''(i) AUTHORITY.—If an order is entered under the authority provided under section 1322(b) of title 11, United States Code, that (a) determines the amount of an allowed secured claim under a mortgage in accordance with section 506(a)(1) of title 11, United States Code, and the amount of such allowed secured claim is less than the amount due under the mortgage as of the date of the filing of the petition under title 11, United States Code, or (b) reduces the interest to be paid under a mortgage in accordance with section 1325 of such title, the Secretary may pay insurance benefits for the mortgage as follows:

''(I) FULL PAYMENT AND ASSIGNMENT.—The Secretary may pay the insurance benefits for the mortgage, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A). The insurance benefits shall be paid in the amount equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of the filing of by the mortgagor of the petition under title 11 of the United States Code. Nothing in this Act may be construed to prevent the Secretary from providing insurance under this title for a mortgage that has previously been assigned to the Secretary under this subclause. The decision of whether to utilize the authority under this subclause for payment and assignment shall be at the election of the mortgagee, subject to such terms and conditions as the Secretary may establish.

''(II) ASSIGNMENT OF UNSECURED CLAIM.—The Secretary may make a partial payment of the insurance benefits for any unsecured claim under the mortgage, but only upon the assignment to the Secretary of any unsecured claim of the mortgagee against the mortgagor or others arising out of such order. Such assignment shall be deemed valid irrespective of whether such claim has been or will be discharged under title 11 of the United States Code. The insurance benefits shall be paid in the amount specified in subclause (I) of this clause, as such amount is reduced by the amount of the allowed secured claim. Such allowed secured claim shall continue to be insured under section 203.

''(III) INTEREST PAYMENTS.—The Secretary may make periodic payments, or a one-time payment, of insurance benefits for interest payments that are reduced pursuant to such order, as determined by the Secretary, but

only upon assignment to the Secretary of all rights and interest related to such payments.

''(ii) DELIVERY OF EVIDENCE OF ENTRY OF ORDER.—Notwithstanding any other provision of this paragraph, no insurance benefits may be paid pursuant to this subparagraph for a mortgage before delivery to the Secretary of evidence of the entry of the order issued pursuant to title 11, United States Code, in a form satisfactory to the Secretary.'';

(2) in paragraph (5), in the matter preceding subparagraph (A), by inserting after ''section 520, and'' the following: '', except as provided in paragraph (1)(E),''; and

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

''(10) LOAN MODIFICATION PROGRAM.—

''(A) AUTHORITY.—The Secretary may carry out a program solely to encourage loan modifications for eligible delinquent mortgages through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

''(B) PAYMENT OF BENEFITS AND ASSIGNMENT.—Under the program under this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with paragraph (5)(A), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A).

''(C) DISPOSITION.—After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently—

''(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

''(ii) act as a Government National Mortgage Association issuer, or contract with an entity for such purpose, in order to pool the mortgage into a Government National Mortgage Association security; or

''(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

''(D) LOAN SERVICING.—In carrying out the program under this section, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.''.

(b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—Paragraph (1) of section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)(1)) is amended by striking ''12 of the monthly mortgage payments'' and inserting ''30 percent of the unpaid principal balance of the mortgage''.

(c) IMPLEMENTATION.—The Secretary of Housing and Urban Development may implement the amendments made by this section through notice or mortgagee letter.

**SEC. 9023. ADJUSTMENTS AS RESULT OF MODIFICATION OF RURAL SINGLE FAMILY HOUSING LOANS IN BANKRUPTCY.**

(a) GUARANTEED RURAL HOUSING LOANS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) in paragraph (7)—

(A) in subparagraph (A), by inserting before the period at the end the following: '', unless the maturity date of the loan is modified in a bankruptcy proceeding or at the discretion of the Secretary''; and

(B) in subparagraph (B), by inserting before the semicolon the following: '', unless such rate is modified in a bankruptcy proceeding'';

(2) by redesignating paragraphs (13) and (14) as paragraphs (14) and (15), respectively; and

(3) by inserting after paragraph (12) the following new paragraph:

''(13) PAYMENT OF GUARANTEE.—In addition to all other authorities to pay a guarantee claim, the Secretary may also pay the guaranteed portion of any losses incurred by the holder of a note or the servicer resulting from a modification of a note by a bankruptcy proceeding.''.

(b) INSURED RURAL HOUSING LOANS.—Subsection (j) of section 517 of the Housing Act of 1949 (42 U.S.C. 1487(j)) is amended—

(1) by redesignating paragraphs (2) through (7) as paragraphs (3) through (8), respectively; and

(2) by inserting after paragraph (1) the following new paragraph:

''(2) to pay for losses incurred by holders or servicers in the event of a modification pursuant to a bankruptcy proceeding;''.

(c) IMPLEMENTATION.—The Secretary of Agriculture may implement the amendments made by this section through notice, procedure notice, or administrative notice.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Georgia (Mr. MARSHALL) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. MARSHALL. Madam Chair, this is an amendment which is identical to a bill passed by the House earlier this year, in March. The bill permits what is referred to as ''cramdown'' in chapter 13 with regard to private home mortgages. It is intended to address this foreclosure crisis without taxpayers having to put money into the deal. It essentially forces the parties to deal with their problems without having vacancies and foreclosures in our neighborhoods.

In that sense, it helps all lenders with real estate portfolios. It helps the individuals whose homes might be foreclosed upon. It actually helps the creditors, who are forced into the chapter 13 process because, in almost every instance, their portfolios are improved by not having as many houses in foreclosure, and in almost every instance, they get better deals in the chapter 13 process than they would in the normal foreclosure process.

We should have done this long ago. It would have helped the housing crisis and, consequently, the economy of the country.

I compliment Mr. MILLER from North Carolina. This was originally his bill. He has been pushing this for several years. I also compliment Ms. ZOE LOFGREN from California, who couldn't be here today because of family matters, because she has been a real stalwart in moving this forward.

I reserve the balance of my time.

Mr. GOODLATTE. I rise to claim time in opposition.

The Acting CHAIR. The gentleman from Virginia is recognized for 5 minutes.

Mr. GOODLATTE. Madam Chair, I yield 1 minute to the gentleman from Texas (Mr. SMITH), the ranking member of the Judiciary Committee.

Mr. SMITH of Texas. I thank the gentleman from Virginia (Mr. GOODLATTE), the deputy ranking member of the Judiciary Committee, for yielding me time.

Madam Chairwoman, those who confront mortgage foreclosures are understandably in difficult situations, but this bankruptcy amendment will only lead to a worse situation for everyone.

The number one cause of foreclosures today is job loss. The number two cause is homes which are mortgaged for more than they are worth. Sending homeowners with these problems into chapter 13 bankruptcy is no solution at all. The jobless do not have the steady incomes that are required to file for a chapter 13 bankruptcy, and those who bet wrong on a rising housing market should honor the mortgages for which they have freely contracted.

Allowing bankruptcy courts to cram down mortgage principal will only lead to higher interest rates and tougher mortgage terms for all future homeowners.

Why should those who have done nothing wrong have to pay that price?

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, let me just make a couple of observations. If, in fact, you are jobless and don't have income, you are not eligible for chapter 13. Consequently, you won't be able to cram down. It is those who do have jobs and who do have income who could survive if they had the opportunity to restructure their debt. They would be eligible. It's only those folks.

As far as increasing the cost of credit is concerned, this bill provides that it is retroactive. It doesn't apply to future credit. Many, many experts have looked at this and have concluded that it will not increase the cost of future credit.

I reserve the balance of my time.

Mr. GOODLATTE. Madam Chair, I recognize myself for 2 minutes.

First, I will say that the gentleman from Georgia may assert that this will benefit creditors, but I know a few creditors who extend home mortgage loans who favor this legislation.

Our country has fallen into a serious economic recession, a recession that has been worsened by the foreclosure crisis. Until we address the rising number of foreclosures, it will be difficult for the economy to recover. Unfortunately, this bankruptcy amendment, which I don't think belongs in this legislation to begin with, not only fails to

solve the foreclosure crisis, but it also will make the crisis deeper, longer, and wider.

Allowing bankruptcy courts to modify home mortgages will have adverse consequences for all while providing little real relief to distressed borrowers. Bankruptcy cramdowns will invariably lead to higher interest rates and to less generous borrowing terms for future borrowers. The gentleman may claim that it won't affect future borrowers, but the fact of the matter is, if this can be done now for this purpose, the advocates of this legislation will likely, in the future, see this made a permanent provision in our bankruptcy laws. It will have the effect of causing interest rates to go up and of causing credit to be less available.

Unemployment has been a driving factor behind most foreclosures, but because individuals without regular incomes may not file for bankruptcy under chapter 13, cramdown will do nothing for those most in need of relief—the unemployed. Additionally, many borrowers walk away from their homes, not because they can't afford their monthly payments, but because their homes are mortgaged for more than they are worth. These borrowers should live with the responsibility of their decisions and not receive bailouts from bankruptcy courts.

Furthermore, we must not forget that cramdown will not only impact lenders but investors as well. These investors often include pension funds, which represent the retirement savings of millions. We should not pass the cost of irresponsible borrowing and lending off on current and future retirees.

The Acting CHAIR. The time of the gentleman has expired.

Mr. GOODLATTE. I yield myself an additional 30 seconds.

Madam Chair, there is no reason to allow mortgage cramdown, with its attendant high cost, considering it will produce only modest results at best.

If we pass this amendment, what message does it send to the 90 percent of homeowners who are making their payments on time? How can we ask them to foot the bill for their neighbors' mortgages? What do homeowners think when they pay back the full amount of the principal they owe while others receive a government reduction in principal?

We do need to do everything we can to help solve the foreclosure crisis, but we must avoid measures like cramdown, which punishes the successful, taxes the responsible, and holds no one accountable.

I reserve the balance of my time.

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, to other homeowners, we should say that your home values won't decline as rapidly, because there won't be as many vacancies. We are not asking you to put a dime into the deal. No taxpayer dollars go into the deal at all. To those who cannot afford chapter 13, obviously, some other remedy is called for than this; but for those who can afford a chapter 13, you are helping everybody by filing a chapter 13.

Having spent years in this business, creditors will not be harmed, and the cost of credit will not go up. That is particularly true because, in this bill, it only applies to existing mortgages. It doesn't apply to future mortgages, so it is widely conceded that the cost of credit will not go up. This is truly a win-win.

I was originally opposed. I've been in this business for a long time. I had a change of heart. The change of heart focuses on the crisis that we are in right now. You can go to my Web site. On the front page of the Web site, those who are interested will find a detailed explanation of why this is absolutely the right thing to do.

With that, it seems to me I've responded to everything that the gentleman from Virginia has said.

I reserve the balance of my time.

The Acting CHAIR. The gentleman from Virginia has 1½ minutes remaining.

Mr. GOODLATTE. Madam Chair, I yield 1½ minutes to the gentleman from California (Mr. DANIEL E. LUNGREN), a member of the committee.

Mr. DANIEL E. LUNGREN of California. Madam Chair, this is a prime example of good intentions resulting in bad policy.

My area is one of the areas hit as badly as any with respect to foreclosures. We have not cleared the market yet. We are in deep, deep shape. The last thing we need is to increase the level of uncertainty within the mortgage market, and that's what it does. It may be limited by its terms, but if we do it now, we can do it again.

Some people ask, Why would we not allow cramdown for residential housing?

Looking at this with a case in previous years, Supreme Court Justice Stevens said, The favorable treatment of residential mortgages was intended to encourage the flow of capital into the home lending market.

That is why this exists in the bankruptcy code today, precisely because it allows more people access to purchasing homes, and premiums are not as high as they otherwise would be precisely because you cannot allow cramdown in bankruptcy proceedings now. That's the sole substance of the reason we have this.

We are going to reverse this as a matter of public policy. It is going to create greater uncertainty and thereby increase the premiums in the future for everybody else, and it will deny access to the housing market for those we seek to help.

Mr. MARSHALL. I yield myself such time as I may consume.

Madam Chair, I will simply repeat:

Since this is only applicable to existing mortgages, it will have no effect on the cost of future mortgages. The beauty of it is we will have fewer foreclosures.

So, to the gentleman from California and to those in California who are in neighborhoods which are really struggling with this phenomenon of housing prices collapsing because of all of the vacancies, all of those folks will be helped by this without putting a single dime of taxpayer dollars in the deal. It seems to me that is a complete justification for doing this. We should have done it long ago.

I reserve the balance of my time.

The Acting CHAIR. The gentleman from Virginia has no time remaining, and the gentleman from Georgia has 1½ minutes remaining.

Mr. MARSHALL. Madam Chair, there is a thing called the ''tragedy of the commons.'' It is a theoretical concept that applies in this particular case. It refers to the opening of common areas for grazing. Then those who have sheep come in and overgraze that area, and the effect is not that everybody gets wealthier; it's that everybody gets poorer.

As an individual creditor, I am not interested in having somebody fool around with me in bankruptcy court or something like that. Yet, combined, creditors are advantaged by having fewer foreclosures on the market in a situation like this. Having represented an awful lot of banks, having spent an awful lot of my life as a bankruptcy lawyer, law professor, and commercial litigator, I am absolutely convinced that I was wrong to initially reject this concept. We should have done it a couple of years ago.

If we apply it now, we will catch what appears to be an ongoing wave of foreclosures. It will help the individuals who can rescue their homes. It will lessen the number of foreclosures, consequently helping all other homeowners. No taxpayer dollars are involved, and creditors are assisted by this with no threat whatsoever to an increase in mortgage prices.

We passed this before. We should pass it again. It is appropriate to this particular piece of legislation because the work we are doing right now is prompted as a result of the credit crisis that was caused initially by housing issues. So housing should be addressed as part of fixing the overall financial situation.

Mr. LUCAS. Madam Chair, this amendment will most certainly not help those who it is designed to help. It will drive up the cost of loans, limit the number of loans that can be made, raise interest rates, and increase opportunities for abuse in the bankruptcy system.

I want to focus the House on another important problem that has not been discussed: how the bankruptcy laws and the accounting rules and treatments combine to do potentially substantial and lasting damage to the financial system.

Under existing accounting rules, any bankruptcy loss may be considered an indication of impairment. The term that is used by accountants is "other than temporarily impaired," or "OTTI." I want to make sure that the House understands the consequences of this problem in the real world. Even if a company took a

small bankruptcy loss on one of the residential mortgage-backed securities, RMBS, that it owns, the amount of loss that would be recognized in that company's income statement is a full writedown to deeply depressed market values, not just the amount deemed to be a bankruptcy. Any loss of principal, current or future, requires this treatment no matter what term is used to describe the loss. If a judge can adjust principal, then a significant detrimental impact to the company will automatically follow.

The House must clearly understand that the losses which would be recognized by financial institutions in this situation are far greater than the amount of the bankruptcy losses. Any RMBS holder will have to record these losses in the same manner, and so the threat of bankruptcy "cramdowns" casts a huge shadow across the entire financial services industry. For example, if a company owns $5 million in RMBS with a current market value of $2,500,000, and there is a bankruptcy loss per the judge of $50,000 economic loss to the preferred RMBS traunch, the required financial statement loss under existing accounting rules would be $2,500,000. In this example, accounting rules require booking the financial statement loss at 50 times the actual economic loss.

This is a stark, but true, statement of the horrific impact that existing accounting rules are likely to have on the financial services industry in the event this legislation becomes law. It would only take a few of these kinds of losses to destroy the current year operating positions of any company and greatly impact its overall capital position.

This means that the cramdown amendment the House considers today carries with it a virus that threatens to consume significant parts of the financial services industry, particularly any company that is a significant holder of RMBS. The majority either does not understand, or has chosen not to deal with, this significant and looming problem. Likewise, there is a lack of understanding about the major role that accounting rules and treatments play in it, I earnestly hope that our colleagues in the other body will address this issue squarely, and understand that cramdown without accounting reform and strict limitations on the discretion of bankruptcy judges has the potential to create significant and unanticipated collateral damage to our financial system, as well as loss of credibility with financial services industry customers and widespread negative ratings from all rating agencies.

Ms. FUDGE. Madam Chair, one in seven mortgages in the United States is now either delinquent or in foreclosure. This is an all time high. By the close of this year, there will be nearly 3 million homes lost to foreclosure.

This amendment gives homeowners a chance to save their homes. It would allow bankruptcy courts to extend repayment timelines, lower excessive interest rates, and modify mortgages.

It will protect hard-working and honest Americans struggling to keep their homes. As I've witnessed firsthand in my own district, the relentless tide of foreclosures has a crippling and destabilizing effect on the community.

I urge my colleagues to support this amendment.

Mr. ROYCE. Madam Chair, I rise in opposition to this amendment.

Let me briefly read a quote on this issue from Supreme Court Justice John Paul Stevens—who tends to be a left-leaning member of the Court. In 1993, Justice Stevens said:

> At first blush it seems somewhat strange that the Bankruptcy Code should provide less protection to an individual's interest in retaining possession of his or her home than of other assets . . . [but] favorable treatment of residential mortgages was intended to encourage the flow of capital into the home lending market.

As Justice Stevens indicates—there is a reason why the bankruptcy code does not treat residential mortgages like it treats credit cards or auto loans. We want to ensure investment certainty and encourage the flow of capital into this market.

The government makes up the secondary mortgage market right now—there is no private market.

As our housing market continues to struggle through one of the worst shocks in our nation's history, certainty and investment security is essential to a recovery. This amendment prevents that.

I encourage my colleagues to oppose the amendment.

Mr. CONYERS. Madam Chair, I rise in support of this commonsense amendment to give struggling homeowners a fair chance to keep their homes when it makes economic sense.

I am joined today by a diverse bipartisan group of cosponsors, including MIKE TURNER, ZOE LOFGREN, JIM MARSHALL, MAXINE WATERS, STEVE COHEN, BRAD MILLER, BILL DELAHUNT, JERRY NADLER, and MARCIA FUDGE.

This is the same provision the House approved in March as a key component of H.R. 1106, the "Helping Families Save Their Homes Act."

As the House considers financial regulatory reform legislation today, we should not forget the problem that started it all—the cataclysm of home mortgage foreclosures.

These foreclosures have pulled the rug out from under our economy, devastating families, neighborhoods, and local governments. And unfortunately, the end to this toxic cycle is nowhere in sight.

In Wayne County, Michigan, which includes Detroit, there are almost 200 foreclosure-related actions every day, even worse than the 138 foreclosures a day back in July.

According to recent data, 14 percent of American homeowners were in foreclosure or had fallen behind in their mortgage payments—up from 10 percent in 2008.

This Wednesday, the Congressional Oversight Panel for TARP released a report in which it projected that there could be up to 13 million foreclosures over the next 5 years.

We have not seen foreclosure numbers like these since the Great Depression.

This amendment will help provide meaningful relief to struggling homeowners, by giving bankruptcy courts the authority to make fair modifications to mortgages, giving families a decent chance to come to terms with their lender on workable payment terms.

The amendment would allow the courts to extend repayment periods, reduce excessive interest rates and fees, and adjust the principal balance of the mortgage to a home's present-day market value.

The amendment also grants authority to the Department of Veterans Affairs, the Federal Housing Administration, and the Rural Housing Service to support fair modification of mortgages, by continuing to honor Federal guarantees for them after they are modified.

This is imminently fair to mortgage lenders. They will still get everything they could reasonably hope to obtain if the home is foreclosed on and sold—more, in fact—and without forcing the family out of house and home.

True, the lenders will not get every dime they might theoretically get on the mortgage paper they now hold. But that is a dangerous pipe dream. And the prospect of rational modification in the courts should serve as a reality check, and help create a healthy incentive for more meaningful voluntary modifications to be done outside of court.

As it is now, lenders and servicers simply do not have enough of an incentive to modify mortgages in a meaningful and realistic way. It is too easy for them to hide their heads in the sand until the damage is done. Voluntary mortgage modification programs, by themselves, simply haven't worked.

There is also a matter of basic equity here. Mortgages on second and third homes and investment properties can all be modified in the courts, as can virtually any other secured claim, including claims secured by yachts, private jets, and commercial real estate worth many millions of dollars.

It is unfathomable to me that a working family does not have the same opportunity to save its home.

I thank the chairman of the Financial Services Committee, BARNEY FRANK, for his support on this important issue.

I also want to thank all of my cosponsors on this amendment—MIKE TURNER, ZOE LOFGREN, JIM MARSHALL, MAXINE WATERS, STEVE COHEN, BRAD MILLER, BILL DELAHUNT, JERRY NADLER, and MARCIA FUDGE.

In the midst of our response to the widespread damage large Wall Street financial institutions caused by their recklessness—including the drain of hundreds of billions of taxpayer dollars to bail them out—we also have a moral obligation to help average working families who are struggling to save their homes.

The Acting CHAIR. The gentleman's time has expired.

The question is on the amendment offered by the gentleman from Georgia (Mr. MARSHALL).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GOODLATTE. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Georgia will be postponed.

□ 1015

AMENDMENT NO. 26 OFFERED BY MR. GARRETT OF NEW JERSEY

The Acting CHAIR. It is now in order to consider amendment No. 26 printed in House Report 111–370.

Mr. GARRETT of New Jersey. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 26 offered by Mr. GARRETT of New Jersey:

Page 1041, beginning on line 15, strike paragraph (5) and insert the following:

(5) in subsection (e), by striking paragraph (1) and inserting the following new paragraph (1):

''(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission, provided that such nationally recognized statistical rating organization certifies that it received less than $250,000,000 during its last full fiscal year in net revenue for providing credit ratings on securities and money market instruments issued in the United States.'';

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from New Jersey (Mr. GARRETT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from New Jersey.

Mr. GARRETT of New Jersey. Madam Chair, I was just at the microphone a moment ago and speaking about the recognition that I think we have from both sides of the aisle that the CRAs, credit rating agencies, were part and parcel to the causes of the financial situation that we find ourselves in right now.

During the time, I raised two out of probably three significant points on this and what we try to need to do when it comes to reform. I mentioned the fact that we need to reduce investors' reliance upon rating agencies. I mentioned, also, that we need to encourage investor due diligence, which sort of goes with it, if you are going to reduce reliance and they have to be more due diligent.

The third point I didn't raise was that we need to have increased competition between the credit rating agencies. Unfortunately, if you look at the bill before us, actually, title V of the bill includes a number of provisions that will basically exacerbate the current problems within the industry and, as I said on the floor yesterday, that actually make it harder, make it more difficult for investors to actually get the information that they need in order to make those decisions that they have to before they invest.

If you go back a couple of years, actually, if you go back 3 years, we passed the credit rating agency reform legislation—and it was about 3 years ago. The main focus of that reform back then was to do what? It was to try to increase competition between the various rating agencies. There are only about three major ones, but we were going to try to make smaller ones to get into the market with more competition. Maybe we could eliminate some of the problems I have already stated.

That was just 3 years ago, and the reason then that I voted just a short time ago this year against the legislation that came out of committee, that was going to try to reform the CRAs, was because it did the exact opposite. It would basically decrease the competition in the industry. I think we need more competition.

The reason that the legislation that came out of the committee, I thought, would decrease competition is because, well, it would have imposed a whole bunch of new liability on the CRAs, and it would just basically discourage them to get into the industry at all. That's maybe one of the reasons why in the committee's language there was a provision in it that says we are not going to let you out. Once you are an NRSRO, once you are registered, or recognized I should say, we are not going to let you out of it. They realize with all of this additional registration, with all this additional liability, no one would want to be a CRA anymore.

The amendment that we have before us recognizes that problem, that we want to have competition, but if you have all of these additional rules, regulations, and liabilities on them, they are all going to flee. We believe that we can come to a proverbial middle ground on this. That is to say, allow those CRAs, credit rating agencies that are of the smaller size, that is net revenues of $250 million or less in a year, to be able to retain the ability to deregister. That's what the legislation does before us.

With that, I will reserve the balance of my time.

Mr. KANJORSKI. I claim the time in opposition.

The Acting CHAIR. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. KANJORSKI. Madam Chairman, under current law, credit rating agencies operate under a voluntary system of registration with the United States Securities and Exchange Commission. We changed that with a provision in the manager's amendment that would require all rating agencies with appropriate exemptions to register with the Commission.

The gentleman from New Jersey's amendment inserts a voluntary withdrawal from registration with the Commission for those rating agencies who earn less than $250 million of net revenue. This amendment would have the effect of allowing the smallest of rating agencies, now registered as Nationally Recognized Statistical Rating Organizations, to opt out of the system at some time in the future.

The proposal would also maintain the close supervision of the largest rating agencies, the ones most likely to issue the ratings used by investors.

Based on that, Madam Chairman, I have no opposition to this amendment.

I yield back the balance of my time.

Mr. GARRETT of New Jersey. I will just close by saying that I thank the gentleman for his support of the legislation, or no opposition to the amendment. I appreciate the very many, many months of working together on this issue and other issues as well.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from New Jersey (Mr. GARRETT).

The amendment was agreed to.

The Acting CHAIR. The Chair understands that amendments 29, 30, and 31 will not be offered.

AMENDMENT NO. 32 OFFERED BY MS. SCHAKOWSKY

The Acting CHAIR. It is now in order to consider amendment No. 32 printed in House Report 111–370.

Ms. SCHAKOWSKY. Madam Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 32 offered by Ms. SCHAKOWSKY:

Page 825, after line 12, insert the following new section:

**SEC. 4413. TREATMENT OF REVERSE MORTGAGES.**

(a) IN GENERAL.—The Director shall examine the practices of covered persons in connection with any reverse mortgage transaction (as defined in section 103(bb) of the Truth in Lending Act (15 U.S.C. 1602)) and shall prescribe regulations identifying any acts or practices as unlawful, unfair, deceptive, or abusive in connection with a reverse mortgage transaction or the offering of a reverse mortgage.

(b) REGULATIONS.—In prescribing regulations under subsection (a), the Director shall ensure that such regulations shall—

(1) include requirements for—

(A) the purpose of preventing unlawful, unfair, deceptive or abusive acts and practices in connection with a reverse mortgage transaction; and

(B) the purpose of providing timely, appropriate, and effective disclosure to consumers in connection with a reverse mortgage transaction that are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title;

(2) with respect to the requirements under paragraph (1), be consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title; and

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, consistent with section 4302(d), that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for Home Equity Conversion Mortgages under section 255 of the National Housing Act.

(c) CONSULTATION.—In connection with the issuance of any regulations under this section, the Director shall consult with the Federal banking agencies, State bank supervisors, the Federal Trade Commission, and the Department of Housing and Urban Development, as appropriate, to ensure that any proposed regulation—

(1) imposes substantially similar requirements on all covered persons; and

(2) is consistent with prudential, consumer protection, civil rights, market or systemic objectives administered by such agencies or supervisors.

(d) DEADLINE FOR RULEMAKING.—The Director shall commence the rulemaking required under subsection (a) not later than 12 months after the date of the enactment of this Act.

The Acting CHAIR. Pursuant to House Resolution 964, the gentlewoman from Illinois (Ms. SCHAKOWSKY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Illinois.

Ms. SCHAKOWSKY. Madam Chairman, I yield myself as much time as I may consume.

I want to thank Representative TITUS for joining me in offering this important amendment to make sure that the new Consumer Financial Protection Agency has authority to regulate reverse mortgages. It is a proposal that is supported by the AARP.

Reverse mortgages are unique mortgage products that allow homeowners over age 62 to borrow against their homes to receive either cash or a line of credit. The loan is paid back when the homeowner dies or sells the home. In the past 3 years, more than 335,000 federally insured reverse mortgages have been issued to seniors.

Unfortunately, all is not well in the reverse mortgage market. An October report by the National Consumer Law Center found many of the abusive practices that were common in the subprime lending market before its collapse are also common in reverse mortgage transactions. Those practices include high fees, incentives for brokers that are harmful to borrowers, and lenders steering consumers to products that are more costly than necessary. Also, securitization, as in the subprime market, is becoming more common for reverse mortgages.

Unfortunately, the complexity of the loans and the age of the typical borrower have made the reverse mortgage market ripe for scam artists. We have to make sure that seniors who use reverse mortgages are protected against unlawful and unfair practices.

The amendment I am offering seeks to correct an oversight in the CFPA provisions of the bill. The bill, as written, gives the CFPA authority over a number of consumer statutes, but a majority of reverse mortgages today are FHA insured home equity conversion mortgages, which are primarily regulated by HUD under the National Housing Act statute. Therefore, as currently written, reverse mortgages may not clearly fall within the CFPA's authority.

My amendment would clarify that the CFPA director has oversight and regulatory authority over lenders and brokers that issue reverse mortgages and directs the agency to consult with HUD as it develops regulations.

My amendment would also require CFPA to begin a rulemaking within 1 year of the bill's enactment in order to develop regulations that will make sure that reverse mortgage transactions are not unfair, deceptive, or abusive.

I urge my colleagues to support this amendment.

I reserve the balance of my time.

Mr. GARRETT of New Jersey. I claim time in opposition.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. GARRETT of New Jersey. I yield myself 3 minutes.

Madam Chair, I guess here is an example of the old saying, ''Here we go again.'' The CFPA, an entity that we have already discussed both today and yesterday, is an idea of contracting consumer choice, putting limitations on the consumers' ability to buy products that they need and want, and all the time, but at the same time, causing a cost to the overall system of credit and jobs in this country.

The additional cost to the CFPA has already been examined by outside organizations and has been seen to have a negative impact for this country to grow ourselves out of the economic morass that we find ourselves in today.

Experts have said, and we have yet to hear anyone from the other side of the aisle refute these studies, nor, for that matter, when we asked the other side of the aisle earlier, from the gentleman from North Carolina, I believe, do they have any studies to refute these or to present the case that actually would go in the opposite direction, they said no or had no answer.

Experts have shown that the CFPA alone would add a cost of credit to the system between 1.25 or 1.4 to 1.6, as I always say, about 1.5 percentage points to the cost of credit in this country. What does that mean? Even in the case of reverse mortgages, I guess it would apply that you would say that the cost of your credit, if you have a 6 percent loan now would go up to around 7, 7.5 percent. Just the act of borrowing will be made harder by the cost of the underlying bill.

Now we see here with this amendment, if the CFPA was not omnipotent enough with their power to reach in basically every single corner of the economy of this country, now we are going to let them go even a little built further.

Now I say all that with the understanding that reverse mortgages sometimes in the past have a history in certain cases—not all, certainly—of causing problems for our seniors, and that is certainly something that regulators need to and have the ability to take a look at. But this certainly is not the answer. This is crafted in such a way that would broaden the CFPA powers and hurt credit.

One other point on this as well. When you are hurting the credit markets of this country, you are also hurting the opportunity to grow this economy with regard to jobs. I think that same study, as well, gave us a number around 4.3 percent reduction in the increase of jobs. What does that mean to you and me? Well, with unemployment around 10 percent, that means that we could be looking at an additional million people in this country who will not be able to get jobs.

How does that help seniors? Seniors who may be working or not working, seniors who have people or other people in their families that are working, how does it help any senior or help anyone in this country if we are going to put more impediments and roadblocks in the way to this country growing again, to getting credit down again and getting unemployment back down from the 10 percent that we find ourselves in today?

I stand opposed to this amendment and opposed to putting additional powers in the Federal Government and the CFPA and within the authorities that they have already.

I reserve the balance of my time.

Ms. SCHAKOWSKY. May I inquire how many minutes I have left?

The Acting CHAIR. The gentlewoman from Illinois has 2½ minutes remaining.

Ms. SCHAKOWSKY. At this time I would like to yield 1 minute to the chairman of the committee, BARNEY FRANK.

Mr. FRANK of Massachusetts. Madam Chair, we keep hearing about these studies. They were commissioned by organizations ideologically opposed to this. Surprise, surprise, they got back the answers they wanted. I haven't seen them. No one has produced them. They are not worth anything. They are simply quantifications of ideology which are entitled to no weight.

I understand that there are people who do not like consumer regulation. What we learn is that in its absence, abuses can proliferate that become systemic problems, but it's especially relevant when we are dealing with the elderly.

We know there are people who preyed on older people. There are people eligible for this program in their eighties who had lives of hard work that did not include sophisticated involvement with financial instruments. There have been problems of abuse.

We, in fact, adopted, I think, without any opposition, a piece of legislation that said you cannot be the one that sells somebody a reverse mortgage and then becomes his or her investment adviser, because of abuses. Protecting the elderly against abuse shouldn't be controversial.

Mr. GARRETT of New Jersey. Does the gentlewoman have other speakers?

Ms. SCHAKOWSKY. I do.

Mr. GARRETT of New Jersey. I reserve the balance of my time.

Ms. SCHAKOWSKY. Madam Chairman, I yield now to the gentlewoman from Nevada (Ms. TITUS) for the balance of my time.

Ms. TITUS. Madam Chairman, every day seniors are targeted by lending agencies through mailings, phone calls, and TV ads offering reverse mortgages with promises of free money to finance trips, new cars, and gifts in their golden years. While a reverse mortgage may be an appropriate product for some seniors, it's a complex financial instrument which is being aggressively marketed to our most vulnerable in society.

Accordingly, many seniors today find themselves in financial hardship due to unfair and unclear agreements, along with excessive fees that come as a result of reverse mortgages. They have

learned the hard way that the reality of a reverse mortgage is not always as advertised, and now they face severe financial consequences in what is supposed to be their golden years.

The amendment that we are offering today provides needed safeguards for our Nation's seniors by requiring that the new Consumer Financial Protection Agency oversee the reverse mortgage industry to ensure seniors are not exposed to unfair and deceptive practices.

Protecting our seniors from unfair and unclear financial products is long overdue. Reverse mortgages need to be clearly and closely monitored and regulated in an effort to ensure seniors don't lose their home and equity that they have built up through a lifetime of hard work.

I am confident that the amendment, which has the endorsement of AARP, will offer appropriate flexibility and protections for our seniors.

I want to thank my colleague, Representative SCHAKOWSKY, and also the chairman of the committee, for working with me on this important issue.

I urge my colleagues to support the amendment.

□ 1030

Mr. GARRETT of New Jersey. Madam Chair, I yield myself just 20 seconds.

To the chairman's comment with regard to our study, which, as he said, is simply a quantification of ideology, whenever he has an issue like that, I just think that that is an abandonment of originality because any time that we have a study or what have you, he just refers back to ideology.

We would always ask the other side of the aisle, ideological or otherwise, we would be happy to see any study to support anything that is in this bill that will actually not harm our economy nor create hardships for the creation of jobs nor create hardships for creating increases to credit. We would like it, ideological or otherwise.

Madam Speaker, I yield the balance of my time to the gentleman from Texas (Mr. HENSARLING), a man not of ideology alone but a man of facts and figures, a man on the right side of the issue.

Mr. HENSARLING. I thank the gentleman for yielding.

Simply because you are a senior, you shouldn't have to give up your freedom. You shouldn't have to give up your economic liberty.

There are so many reasons to oppose the underlying legislation. It creates a permanent Wall Street bailout authority. At a time where the economic policies of this Congress, of this administration have produced the highest unemployment rate in a generation, they propose legislation that will make credit more expensive, less available, and crush jobs. But now we have an amendment that goes to increase the power of the unelected czar to ban, to ban and ration credit.

You know, ultimately, the American people in the land of the free ought to be able to be free to choose the financial products that they think are best for them. The way to best protect American citizens is with competitive markets that are vigorously enforced for force and fraud but not to take away their essential freedom.

Quit protecting Americans from themselves. Quit assaulting the economic liberties of Americans, especially seniors, in tough economic times who need the money to survive.

We should reject this amendment, reject the job loss, reject the bailout, reject the assault on liberty.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. HENSARLING. Madam Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from Illinois will be postponed.

AMENDMENT NO. 33 OFFERED BY MS. KILROY

The Acting CHAIR. It is now in order to consider amendment No. 33 printed in House Report 111–370.

Ms. KILROY. Madam Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 33 offered by Ms. KILROY: Page 289, line 10, insert ''only'' after ''Fund''.

The Acting CHAIR. Pursuant to House Resolution 964, the gentlewoman from Ohio (Ms. KILROY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Ohio.

Ms. KILROY. Madam Chair, I yield myself such time as I may consume.

It's been a little over a year since the weight of predatory lending, credit default swaps, murky accounting, and risky bets finally gave way and the American taxpayer was forced to bail out Wall Street and the same financial institutions that set our Nation's economy into the worst crisis since the Depression.

The greed and recklessness of Wall Street has cost Main Street dearly. Millions of jobs, hard-earned life savings were lost, and today American families are still recovering.

We know that we need to take action so that American taxpayers are not put in that position again. And over the past year, Chairman FRANK has held countless hearings, markups, and meetings to help bring to the floor today the most sweeping reform of our Nation's financial regulatory system since the New Deal, and he has done so in a transparent and equitable manner.

H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009, will restore and strengthen our Nation's financial system and provide Americans the confidence that there are rules in place that work for them and protect them, not protect the big banks and hedge funds and mortgage industry, that there will be the oversight, the regulation that should keep this kind of crisis from happening again, that should see an end to the risky practices that led to the taxpayer bailout of Wall Street.

But it will also end the ''too big to fail'' problem by implementing a mechanism for the orderly and controlled liquidation of a failed financial institution. And it's very clear that this is going to be funded by the financial institutions themselves. Not by another bailout, not by the taxpayers, no more TARP.

But sometimes increased clarity and added emphasis is called for. By adding one word only to the language regarding the use of assessments, we promise and we reassure our taxpayers that they will not be bailing out Wall Street again. The dissolution fund will only be funded by those financial institutions and their assessments, not our hard-working taxpayers from our cities and towns and farms.

I urge passage of this amendment.

Madam Chair, I reserve the balance of my time.

Mr. HENSARLING. Madam Chair, I rise to claim the time in opposition to the amendment.

The Acting CHAIR. The gentleman from Texas is recognized for 5 minutes.

Mr. HENSARLING. Madam Chair, I yield myself such time as I may consume.

I was very heartened to hear the gentlewoman from Ohio say, quote, ''no more TARP.'' She'll have an opportunity to vote that way later this afternoon. I hope that many of her colleagues on that side of the aisle will follow her example and put their votes where their sentiment is because, indeed, the motion to recommit today will be to end the TARP program. So I look forward to having great support on the other side of the aisle for that motion to recommit.

The particular amendment before us, though, is one that continues to try to perpetuate the myth that somehow taxpayers will not be called upon for a bailout.

Why do you have a bailout fund? You have a bailout fund to bail somebody out. And if for some reason you actually thought that taxpayers were not going to be on the hook, well, $150 billion imposed upon those who form capital, capital intermediaries, are going to make capital more expensive, less available, choke off more credit to small businesses, and increase the double-digit unemployment rate that the Nation now has under this administration in this Congress's economic policies.

How many more jobs have to be lost? We need to open up credit, not close credit.

Second of all, the people who are telling us, oh, don't worry Mr. Taxpayer, Mrs. Taxpayer, you're never going to be called upon to come and bail out these institutions yet again; we've solved that problem.

Madam Chair, these are the very same people who told us that the taxpayer would never be called upon to bail out the government-sponsored enterprises. Yet a trillion dollars of taxpayer exposure liability later, they were wrong. They've told us that about Social Security—going bankrupt; Medicare—going bankrupt; National Flood Insurance Program, never going to need taxpayer money—insolvent. And the list goes on and on and on.

Now, Madam Chair, I know they mean well. I know they believe it when they say it. But with history as my guide, it is not a credible statement for those on the other side of the aisle to make.

So what are we left with? We are left with a perpetual Wall Street bailout bill. We are left with a bill that will crush job creation at a time when our Nation needs to be creating jobs. We have a bill that assaults the fundamental economic liberties of every American citizen, who now has to receive the permission of their government before they can put a credit card in their wallet or get a mortgage for their home.

The best way to end TARP is to end TARP. And every Member of this body will have the opportunity to do it later this afternoon.

Madam Chair, I reserve the balance of my time.

Ms. KILROY. Madam Chair, I yield 2 minutes to the gentleman from Massachusetts (Mr. FRANK), chairman of our committee.

Mr. FRANK of Massachusetts. The gentleman from Texas really doesn't have anything to say against this amendment, but his instinct overcomes that, so he has to say negative things. Among them, though, the most outlandish is his continued effort to blame unemployment on President Obama.

President Obama inherited from President Bush a very serious recession. It turns out now the worst since the Great Depression. And it was begun officially by those who certified, the nonpartisan entities that do that, in December of 2007, after many years of Republican rule both in the House and the Senate and in the White House. Unemployment is decreasing now, and you don't go from very bad to perfect. But this effort to evade responsibility for the Republican policies that caused this recession is, as I said, one of the great examples of blame shifting.

I have to say again we suffered a great disease outbreak on January 21, 2009. Mass amnesia hit the Republican Party. The huge deficit, the lack of regulation that had brought about our financial collapse, the millions of jobs lost. The administration with the worst job record recently is the Bush administration. And the Obama recovery is slower than I wish it would be, but it is clearly on the upswing.

Secondly, the gentleman, to win his partisan points, will lash out at anything. Social Security, he announces now, is going bankrupt. Social Security, credited with all the money paid in, is sound for another 25 years or more. Frightening older people by the false claim that Social Security is going bankrupt is an example of partisanship run riot.

What we also have is this reluctance to accept the fact that we have language that says nothing here can go to perpetuate these institutions. He's right. Fannie Mae and Freddie Mac, which the Republican Party——

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. KILROY. I yield 30 seconds to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. In the 12 years of congressional Republican rule, they didn't do a thing about Fannie and Freddie. We did pass the bill the Bush administration asked us for in 2007. It was too late. But learning from that, we have language here that did not previously exist that bans the use of taxpayer funds, that bans the use of any funds to keep an institution going.

So, yes, unlike the Republicans, who did nothing about Fannie and Freddie in that 12 years, never passed a piece of legislation, we passed a piece of legislation and it was too late, but we've learned from it. And there is binding language here that directly contradicts everything the gentleman from Texas says, but he is not easily fazed by that language.

Mr. HENSARLING. Madam Chair, well, if mass amnesia has affected this side of the aisle, apparently it infected that side of the aisle, too.

I might kindly remind the distinguished chairman of the Financial Services Committee, since he points out 2007 is the year that the financial crisis started, it happens to coincide with the year that the Democrats took control of the United States Congress as well.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. HENSARLING. I would be happy to yield to the distinguished chairman.

Mr. FRANK of Massachusetts. Is the gentleman seriously advancing the argument that it was because the Democrats took over in 2007 that that was why we had a recession?

Mr. HENSARLING. Reclaiming my time, I'm simply pointing out if the gentleman is trying to make associations, there may be an association to be made there as well.

What I am asserting is that the economic policies either enacted or threatened by this Congress and this administration are keeping a recovery from happening. This is an economy that, through any historic standard whatsoever, should have already recovered.

But first we have the stimulus program, which we were told would keep us at 8 percent unemployment. Now we know we have double-digit unemployment, 3.6 million jobs lost since the stimulus program was passed.

□ 1045

We have the $600 billion energy tax passed in the House hanging over the economy. We have the over $1 trillion nationalization of our health care system hanging over the economy. And now this is the fourth leg of the stool, and that is a perpetual Wall Street bailout and a further job loss through credit contraction act of 2009. It is the fourth leg of the economic policies that are preventing jobs from being created.

What do we have to show for the economic policies of this administration? That is the first trillion-dollar deficit in our Nation's history. We have an economic plan that will triple the national debt. Nothing would do more to create jobs than to defeat this bill, let TARP expire, and show the Nation that we will pay off this unconscionable debt.

The Acting CHAIR. All time has expired.

The question is on the amendment offered by the gentlewoman from Ohio (Ms. KILROY).

The amendment was agreed to.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. DRIEHAUS) assumed the chair.

## MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 4165. An act to extend through December 31, 2010, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

H.R. 4217. An act to amend the Internal Revenue Code of 1986 to extend the funding and expenditure authority of the Airport and Airway Trust Fund, to amend title 49, United States Code, to extend authorizations for the airport improvement program, and for other purposes.

H.R. 4218. An act to amend titles II and XVI of the Social Security Act to prohibit retroactive payments to individuals during periods for which such individuals are prisoners, fugitive felons, or probation or parole violators.

The SPEAKER pro tempore. The Committee will resume its sitting.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

The Committee resumed its sitting.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111–370 on which further proceedings were postponed, in the following order:

Amendment No. 12 by Mr. KANJORSKI of Pennsylvania.

Amendment No. 14 by Mr. MCCARTHY of California.

Amendment No. 16 by Mr. PETERS of Michigan.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 12 OFFERED BY MR. KANJORSKI

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. KANJORSKI) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. KANJORSKI:

Page 11, in the item relating to section 7606, strike ''Exemption for Nonaccelerated Filers'' and insert ''Study on methods to reduce the burden of compliance on small companies''.

Page 1221, line 19, strike ''EXEMPTION FOR NONACCELERATED FILERS'' and insert ''STUDY ON METHODS TO REDUCE THE BURDEN OF COMPLIANCE ON SMALL COMPANIES''.

Page 1221, strike lines 20 through 25.

Page 1222. strike lines 1 through 2.

Page 1222, on line 3, strike ''(b) STUDY.—'' and adjust the indentation appropriately.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 153, noes 271, not voting 16, as follows:

[Roll No. 960]

AYES—153

Abercrombie
Ackerman
Andrews
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Carson (IN)
Castor (FL)
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Conaway
Conyers
Courtney
Crowley
Cummings
Dahlkemper
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doggett
Doyle
Edwards (MD)
Ellison
Engel
Eshoo
Farr
Fattah
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hare
Harman
Hastings (FL)
Higgins
Himes
Hinchey
Hirono
Hodes
Holt
Hoyer
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Klein (FL)
Kratovil
Kucinich
Langevin
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Lynch
Maloney
Markey (MA)
Massa
Matsui
McDermott
McGovern
Meek (FL)
Michaud
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Napolitano
Norton
Oberstar
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Pingree (ME)
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Rothman (NJ)
Roybal-Allard
Sánchez, Linda T.
Sarbanes
Schakowsky
Schiff
Scott (GA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Speier
Stark
Sutton
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Tonko
Towns
Tsongas
Van Hollen
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—271

Adler (NJ)
Akin
Alexander
Altmire
Arcuri
Austria
Baca
Bachus
Baird
Barrow
Bartlett
Barton (TX)
Bean
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boucher
Boustany
Boyd
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cardoza
Carnahan
Carney
Carter
Cassidy
Castle
Chaffetz
Chandler
Childers
Coble
Coffman (CO)
Cole
Connolly (VA)
Cooper
Costa
Costello
Crenshaw
Cuellar
Culberson
Davis (AL)
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Donnelly (IN)
Dreier
Driehaus
Duncan
Edwards (TX)
Ehlers
Ellsworth
Emerson
Etheridge
Fallin
Flake
Fleming
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Hall (NY)
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heinrich
Heller
Hensarling
Herger
Herseth Sandlin
Hill
Hinojosa
Hoekstra
Holden
Honda
Hunter
Inglis
Inslee
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kagen
Kind
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kissell
Kline (MN)
Kosmas
Lamborn
Lance
Larsen (WA)
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Luján
Lummis
Lungren, Daniel E.
Mack
Maffei
Manzullo
Marchant
Markey (CO)
Marshall
Matheson
McCarthy (CA)
McCarthy (NY)
McCaul
McClintock
McCollum
McCotter
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
McNerney
Meeks (NY)
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Mollohan
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neal (MA)
Neugebauer
Nunes
Nye
Olson
Ortiz
Owens
Paul
Paulsen
Pence
Perriello
Peters
Peterson
Petri
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Putnam
Quigley
Rehberg
Reichert
Richardson
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sablan
Salazar
Sanchez, Loretta
Scalise
Schauer
Schmidt
Schock
Schrader
Schwartz
Scott (VA)
Sensenbrenner
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Tanner
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Titus
Turner
Upton
Velázquez
Visclosky
Walden
Walz
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—16

Aderholt
Bachmann
Baldwin
Barrett (SC)
Bordallo
Faleomavaega
Filner
Lofgren, Zoe
Moran (VA)
Murtha
Pierluisi
Radanovich
Sessions
Slaughter
Wexler
Young (AK)

□ 1114

Mr. OWENS, Ms. LORETTA T. SANCHEZ of California, Messrs. DICKS, KAGEN, NEAL of Massachusetts, Ms. RICHARDSON, Messrs. HINOJOSA, MEEKS of New York, BACA, INSLEE, and HONDA changed their vote from ''aye'' to ''no.''

Messrs. KRATOVIL, RANGEL, LARSON of Connecticut, and BERMAN changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

## PERSONAL EXPLANATION

Mr. FILNER. Madam Speaker, on rollcall 960, I was away from the Capitol. Had I been present, I would have voted "aye."

AMENDMENT NO. 14 OFFERED BY MR. MCCARTHY OF CALIFORNIA

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. MCCARTHY) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. MCCARTHY:

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. MCCARTHY of California.

Strike section 6012 (relating to ''Effect of Rule 436(G)'').

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 166, noes 259, not voting 15, as follows:

Roll No. 961

AYES—166

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cohen
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)

Dent
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson, Sam
Jordan (OH)
King (IA)
King (NY)
Kingston
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMahon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuler
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Speier
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf

NOES—259

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Fortenberry
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gohmert
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Norton
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Skelton
Smith (WA)
Snyder
Souder
Space
Spratt
Stark
Stearns
Stupak
Sutton
Tanner
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wilson (OH)
Woolsey
Wu
Yarmuth
Young (FL)

NOT VOTING—15

Baldwin
Barrett (SC)
Bordallo
Faleomavaega
Higgins
Kirk
Lofgren, Zoe
Moran (VA)
Murtha
Pierluisi
Radanovich
Sessions
Slaughter
Wexler
Young (AK)

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1121

Mr. LARSON of Connecticut changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. KIRK. Madam Chair, on rollcall No. 961 I was unavoidably detained. Had I been present, I would have voted "no."

Ms. SPEIER. Madam Chair, during rollcall vote No. 961 on H.R. 4173, I mistakenly recorded my vote as "aye" when I should have voted "no."

AMENDMENT NO. 16 OFFERED BY MR. PETERS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. PETERS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 228, noes 198, not voting 14, as follows:

[Roll No. 962]

AYES—228

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Baca
Baird
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Butterfield
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Grayson
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E.B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Norton
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Pingree (ME)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Snyder
Space
Speier
Stark
Stupak
Sutton
Tanner
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—198

Aderholt
Akin
Alexander
Arcuri
Austria
Bachmann
Bachus
Barrow
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cardoza
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Cooper
Costa
Crenshaw
Culberson
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Etheridge
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)

Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Kratovil
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Maffei
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMahon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore (WI)
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Nunes
Nye
Olson
Paul
Paulsen
Pence
Peterson
Petri
Pitts
Platts
Poe (TX)
Polis (CO)
Posey
Price (GA)
Putnam
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Sullivan
Taylor
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Visclosky
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—14

Baldwin
Barrett (SC)
Bordallo
Faleomavaega
Green, Al
Lofgren, Zoe
Moran (VA)
Murtha
Pierluisi
Radanovich
Sessions
Slaughter
Wexler
Young (AK)

The Acting CHAIRMAN. There are 2 minutes remaining on this vote.

□ 1129

So the amendment was agreed to.

The result of the vote was announced as above recorded.

□ 1130

AMENDMENT NO. 35 OFFERED BY MR. MINNICK

The Acting CHAIR. It is now in order to consider amendment No. 35 printed in House Report 111–370.

Mr. MINNICK. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 35 offered by Mr. MINNICK:

Strike title IV and insert the following:

## TITLE IV—CONSUMER FINANCIAL PROTECTION ACT

**SECTION 4001. SHORT TITLE.**

This title may be cited as the ''Consumer Financial Protection Act of 2009''.

**SEC. 4002. CONSUMER FINANCIAL PROTECTION COUNCIL.**

(a) ESTABLISHMENT.—There is hereby established the Consumer Financial Protection Council (hereinafter in this title referred to as the ''Council'') as an independent establishment of the executive branch, which shall consist of—

(1) the Chairman of the Board of Governors of the Federal Reserve System;

(2) the Comptroller of the Currency;

(3) the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation;

(4) the Director of the Office of Thrift Supervision;

(5) the Administrator of the National Credit Union Administration;

(6) the Secretary of the Department of Housing and Urban Development;

(7) the Secretary of the Treasury;

(8) the Chairman of the Securities and Exchange Commission;

(9) the Chairman of the Commodities Futures Trading Commission;

(10) the Chairman of the Federal Trade Commission; and

(11) one individual selected by the State Advisory Committee established under section 4005.

(b) STAFFING.—The Secretary of the Treasury shall provide appropriate staffing for the Council.

**SEC. 4003. CONSUMER FINANCIAL PROTECTION SUBCOMMITTEE.**

(a) ESTABLISHMENT.—There is hereby established within the Council the Consumer Financial Protection Subcommittee (hereinafter in this title referred to as the ''CFPS''), which shall consist of the members of the Council.

(b) PURPOSE.—The purpose of the CFPS is to ensure that all providers of a financial product or service to consumers are subject to meaningful and uniform consumer protection requirements, and that functionally equivalent products are subject to equivalent consumer protection standards.

(c) CHAIRMANSHIP.—

(1) INITIAL CHAIRMAN.—The Chairman of the Federal Trade Commission shall serve as the Chairman of the CFPS for the 2-year period beginning on the date of the enactment of this title.

(2) SUBSEQUENT SELECTION.—After the 2-year period described under paragraph (1), the President shall appoint the Chairman of the CFPS from among the members of the CFPS. The term of the Chairmanship shall be 2 years.

(d) VOTING.—Decisions of the CFPS shall be made by a majority vote of the members of the CFPS.

(e) DUTIES.—The CFPS shall review existing consumer protection regulations and issue new or revised regulations where needed to prevent unfair or deceptive practices.

(f) PROCEDURES FOR PROPOSING AND ISSUING REGULATIONS.—

(1) PROPOSAL.—Any member of the CFPS may propose that the CFPS consider the need for the modification of an existing regulation or for the issuing of a new regulation with respect to a particular consumer financial product or service. After such proposal is made, the CFPS shall develop an analysis of the proposal and prepare a report that either—

(A) recommends that no action be taken; or

(B) recommends the modification of existing regulations or the issuing of new regulations.

(2) PUBLICATION.—With respect to a report prepared under paragraph (1)—

(A) if the CFPS recommends that no action be taken, the CFPS shall make a copy of the report publicly available; and

(B) if the CFPS recommends the modification of existing regulations or the issuing of new regulations, the CFPS shall publish such report in the Federal Register and solicit public comments on such recommendation, pursuant to the Administrative Procedure Act.

(3) MODIFICATION OR ACCEPTANCE.—With respect to each recommendation described under paragraph (2)(B) for the modification of existing regulations or the issuing of new regulations, after the CFPS has considered the public comments on such recommendation, the CFPS shall vote on whether such recommendations should be withdrawn, modified, or published as a final regulation.

(4) REGULATIONS ISSUED BY CFPS CONTROL.—Notwithstanding any other provision of law, to the extent that any other regulation conflicts with a regulation issued by the CFPS under this subsection, such other regulation shall have no force or effect to the extent of such conflict.

(5) PROPOSALS BY STATE ADVISORY COMMITTEE.—

(A) IN GENERAL.—Any proposal made under paragraph (1) by the member of the CFPS selected by the State Advisory Committee shall be accompanied by a certification from such member stating that more than half of the States support such proposal.

(B) METHOD OF DETERMINATION.—For purposes of this paragraph, the State Advisory Committee shall determine the method for determining if a State supports a proposal.

(6) REPORT ON APPROVAL OR OPPOSITION.—Each member of the CFPS shall issue an annual report to the Congress containing a detailed explanation, for each proposal made under paragraph (1), why such member supported or opposed such proposal.

(7) PROCEDURES TO BE APPLIED TO ALL RULEMAKINGS.—The procedures under this subsection shall be used by the CFPS when issuing any regulation under the authority of this title.

(g) CONSUMER FINANCIAL PRODUCTS OR SERVICES EXPRESSLY PERMITTED BY STATE OR FEDERAL LAW.—

(1) VOTING REQUIREMENTS.—Any votes taken by the CFPS to prevent the offering of any consumer financial product or service that is expressly permitted by State or Federal law shall only be agreed to by a two-thirds vote.

(2) RECOMMENDATIONS TO THE CONGRESS.—If the CFPS determines a need to prevent the offering of any consumer financial product or service expressly permitted by State or Federal law, the CFPS shall issue a report to the Congress containing such determination and including—

(A) a description of the specific financial product or service that the CFPS is recommending the Congress should prevent from being offered;

(B) an estimate of the amount of credit provided by and the number of consumers using any such financial product or service;

(C) a list of any States which have expressly permitted any such financial product or service;

(D) the identities of persons known by the CFPS to be offering any such financial product or service;

(E) an analysis of whether there are ample other alternative reasonably priced financial products or services available to meet consumers' credit needs, and a description of such alternative financial products or services; and

(F) the basis and reasoning on which the CFPS has based its recommendation.

(3) DEFINITION.—For purposes of this subsection, the term ''prevent the offering of any consumer financial product or service'' shall mean taking any action that could reasonably result in the direct or indirect prohibition of, or materially interfere with the ability of any person to offer, any consumer financial product or service.

**SEC. 4004. FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.**

Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended by inserting after ''established'' the following: ''as a subcommittee within the Consumer Financial Protection Council''.

**SEC. 4005. STATE ADVISORY COMMITTEE.**

There is hereby established within the Council the State Advisory Committee,

which shall consist of one representative from each of the following:

(1) The Conference of State Bank Supervisors.

(2) The American Council of State Savings Supervisors.

(3) The National Association of State Credit Union Supervisors.

**SEC. 4006. EQUALITY OF CONSUMER PROTECTION ENFORCEMENT RESPONSIBILITIES.**

With respect to each consumer protection agency, the enforcement of the provisions of the consumer protection laws under such agency's jurisdiction shall be of equal importance to such agency as the enforcement of the provisions of other laws under such agency's jurisdiction.

**SEC. 4007. DIRECTOR OF THE CONSUMER FINANCIAL PROTECTION DIVISION.**

(a) ESTABLISHMENT.—There is hereby established within each consumer protection agency a position of Director of the Consumer Financial Protection Division.

(b) COMPENSATION.—With respect to a consumer protection agency, the Director of the Consumer Financial Protection Division shall be compensated in an amount no less than the amount of compensation provided to the head of other subdivisions of such agency of a comparable size.

(c) DIRECT REPORTING.—Each Director of the Consumer Financial Protection Division established under subsection (a) shall report directly to the head of the agency within which such Director is located.

(d) ANNUAL REPORT TO THE CONGRESS.—Each consumer protection agency shall issue an annual report to the Congress detailing the activities of the Director of the Consumer Financial Protection Division and how such activities advanced the agency's consumer protection functions.

**SEC. 4008. PROHIBITING UNFAIR OR DECEPTIVE ACTS OR PRACTICES.**

(a) IN GENERAL.—Each consumer protection agency may prevent a person from committing or engaging in an unfair or deceptive act or practice in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(b) RULEMAKING.—Each consumer protection agency may prescribe regulations identifying as unlawful, unfair, or deceptive acts or practices in connection with any transaction with a consumer for a consumer financial product or service under such agency's jurisdiction.

(c) REFERRAL TO CFPS.—With respect to each regulation issued pursuant to subsection (b), the consumer protection agency issuing such regulation shall propose such regulation to the CFPS under section 4003(f), unless the CFPS already has a substantially similar proposal under consideration.

(d) UNFAIRNESS.—

(1) IN GENERAL.—A consumer protection agency shall have no authority under this section to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service to be unlawful on the grounds that such act or practice is unfair unless such agency has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) EXISTING PUBLISHED GUIDELINES AS FACTOR.—In determining whether an act or practice is unfair, a consumer protection agency shall consider established public policies and regulations, interpretations, guidance, and staff commentaries issued by the consumer protection agencies under the consumer protection laws they enforce.

(e) DEFINITIONS.—For purposes of this section, the terms ''unfair'' and ''deceptive'' shall have the meanings given such terms under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

**SEC. 4009. ADOPTING OPERATIONAL STANDARDS TO DETER UNFAIR OR DECEPTIVE PRACTICES.**

(a) AUTHORITY TO PRESCRIBE STANDARDS.—The consumer protection agencies shall prescribe standards applicable to covered persons to deter and detect unfair or deceptive acts or practices in the provision of consumer financial products or services under such agency's jurisdiction, including standards for—

(1) background checks for principals, officers, directors, or key personnel of the covered person;

(2) registration, licensing, or certification;

(3) bond or other appropriate financial requirements to provide reasonable assurance of the ability of the covered person to perform its obligations to consumers;

(4) creating and maintaining records of transactions or accounts; and

(5) procedures and operations of the covered person relating to the provision of, or maintenance of accounts for, consumer financial products or services.

(b) CFPS AUTHORITY TO ISSUE REGULATIONS.—The CFPS may issue regulations establishing minimum standards under this section for any class of covered persons.

(c) EXCEPTION FOR ENFORCEMENT OF GRAMM-LEACH-BLILEY PRIVACY LAWS AGAINST INSURERS.—Neither the consumer protection agencies nor the CFPS shall have authority to issue or enforce regulations with respect to authorities that are granted to State insurance regulators under section 505(a)(6) of the Gramm-Leach-Bliley Act.

**SEC. 4010. PRESUMPTION OF ABILITY TO REPAY.**

(a) PROHIBITION ON RESIDENTIAL MORTGAGE LOANS THAT WON'T REASONABLY BE REPAID.—

(1) IN GENERAL.—No creditor shall make a residential mortgage loan unless it has a reasonable basis for determining that the consumer can repay the loan.

(2) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

(b) EXEMPTION FOR CERTAIN MODEL TERMS AND CONDITIONS.—Subsection (a) shall not apply to residential mortgage loans containing the model terms and conditions contained in regulations issued by the Council under subsection (c).

(c) PROCEDURE FOR ADOPTING MODEL TERMS AND CONDITIONS.—

(1) IN GENERAL.—Not later than 1 years after the date of the enactment of this title, the Council shall issue regulations containing model terms and conditions for residential mortgage loans, for purposes of subsection (b).

(2) VOTING.—The Council may only issue a regulation under paragraph (1)—

(A) by a majority vote of the Council's members; and

(B) in a vote where each member of the Council casts a vote.

(3) REVISION OF MODEL TERMS AND CONDITIONS.—The Council shall update regulations issued under this subsection from time to time as appropriate.

(4) RULEMAKING PROCEDURES.—In issuing any regulation under this subsection, the Council shall, to the extent practicable, follow the procedures set forth under section 4003(f) for the consideration of proposals by the CFPS.

(d) ENFORCEMENT.—The prohibition under subsection (a) shall be enforced by each member of the Council with jurisdiction over the provision of residential mortgage loans.

**SEC. 4011. EXAMINATIONS BY CONSUMER PROTECTION AGENCIES.**

(a) IN GENERAL.—Each consumer protection agency shall carry out regular examinations of covered persons regulated by such agency.

(b) SCOPE OF EXAMINATIONS.—Examinations carried out pursuant to subsection (a) shall be comparable to those examinations carried out by the Federal banking agencies of insured depository institutions.

**SEC. 4012. CONSUMER RIGHTS TO ACCESS INFORMATION.**

(a) IN GENERAL.—Subject to regulations prescribed by the consumer protection agencies, a covered person shall make available to a consumer, in an electronic form usable by the consumer, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person including information relating to any transaction, series of transactions, or to the account, including charges and usage data.

(b) EXCEPTIONS.—A covered person shall not be required by this section to make available to the consumer—

(1) any confidential commercial information, including an algorithm used to derive credit scores or other risk scores or predictors;

(2) any information collected by the covered person for the purpose of preventing fraud or money laundering, or detecting, or making any report regarding other unlawful or potentially unlawful conduct;

(3) any information required to be kept confidential by any other law; or

(4) any information that the covered person cannot retrieve in the ordinary course of its business with respect to that information.

(c) NO DUTY TO MAINTAIN RECORDS.—No provision of this section shall be construed as imposing any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The consumer protection agencies, by regulation, shall prescribe standards applicable to covered persons to promote the development and use of standardized formats for information, including through the use of machine readable files, to be made available to consumers under this section.

**SEC. 4013. PROHIBITED ACTS.**

It shall be unlawful for any person to—

(1) advertise, market, offer, sell, enforce, or attempt to enforce, any term, agreement, change in terms, fee or charge in connection with a consumer financial product or service that is not in conformity with this title and applicable regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council;

(2) fail or refuse to permit access to or copying of records, or fail or refuse to establish or maintain records, or fail or refuse to make reports or provide information to a consumer protection agency, the CFPS, or the Council, as required by this title, a consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority; or

(3) knowingly or recklessly provide substantial assistance to another person in violation of the provisions of section 4008, or any regulation prescribed or order issued under such section, and any such person shall be deemed to be in violation of that section to the same extent as the person to whom such assistance is provided.

**SEC. 4014. STATE ATTORNEYS GENERAL RIGHT TO SUE.**

No provision of this title shall be construed to limit the applicability or the effect of the decision of the Supreme Court in Cuomo v. Clearing House Assn., L.L.C., 557 U.S. _____ (2009).

**SEC. 4015. ENFORCEMENT.**

(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms ''civil investigative demand'' and ''demand'' mean any demand issued by a consumer protection agency.

(2) CONSUMER PROTECTION AGENCY.—The term ''consumer protection agency'' means—

(A) the appropriate Federal banking agency (as such term is defined in section 3(q) of the Federal Deposit Insurance Act), with respect to entities regulated by the appropriate Federal banking agencies;

(B) the National Credit Union Administration, with respect to a credit union;

(C) the Securities and Exchange Commission, with respect to an entity regulated by such Commission;

(D) the Commodity Futures Trading Commission, with respect to an entity regulated by such Commission; and

(E) the Federal Trade Commission, with respect to any entity not regulated by the appropriate Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, or the Commodity Futures Trading Commission.

(3) CONSUMER PROTECTION AGENCY INVESTIGATION.—The term ''consumer protection agency investigation'' means any inquiry conducted by a consumer protection agency investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that violates this title, any consumer protection law, or any regulation prescribed or order issued by the consumer protection agencies, the CFPS, or the Council under this title.

(4) CONSUMER PROTECTION AGENCY INVESTIGATOR.—The term ''consumer protection agency investigator'' means any attorney or investigator employed by a consumer protection agency who is charged with the duty of enforcing or carrying into effect any provisions of this title, any consumer protection law, or any regulation prescribed or order issued under this title or pursuant to any such authority by the consumer protection agency, the CFPS, or the Council.

(5) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by a consumer protection agency.

(6) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(7) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of this title, any consumer protection law, or of any regulation prescribed or order issued by a consumer protection agency, the CFPS, of the Council under this title or pursuant to any such authority.

(b) INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.—

(1) SUBPOENAS.—

(A) IN GENERAL.—A consumer protection agency or a consumer protection agency investigator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, or other material in connection with hearings under this title.

(B) FAILURE TO OBEY.—In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by a consumer protection agency or a consumer protection agency investigator and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce documents or other material, or both.

(C) CONTEMPT.—Any failure to obey an order of the court under this subsection may be punished by the court as a contempt thereof.

(2) DEMANDS.—

(A) IN GENERAL.—Whenever a consumer protection agency has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to a violation, a consumer protection agency may, before the institution of any proceedings under this title or under any consumer protection law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(i) produce such documentary material for inspection and copying or reproduction;

(ii) submit such tangible things;

(iii) file written reports or answers to questions;

(iv) give oral testimony concerning documentary material or other information; or

(v) furnish any combination of such material, answers, or testimony.

(B) REQUIREMENTS.—Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(C) PRODUCTION OF DOCUMENTS.—Each civil investigative demand for the production of documentary material shall—

(i) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(iii) identify the custodian to whom such material shall be made available.

(D) PRODUCTION OF THINGS.—Each civil investigative demand for the submission of tangible things shall—

(i) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(ii) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(iii) identify the custodian to whom such things shall be submitted.

(E) DEMAND FOR WRITTEN REPORTS OR ANSWERS.—Each civil investigative demand for written reports or answers to questions shall—

(i) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(ii) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(iii) identify the custodian to whom such reports or answers shall be submitted.

(F) ORAL TESTIMONY.—Each civil investigative demand for the giving of oral testimony shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

(ii) identify a consumer protection agency investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(G) SERVICE.—

(i) Any civil investigative demand may be served by any consumer protection agency investigator at any place within the territorial jurisdiction of any court of the United States.

(ii) Any such demand or any enforcement petition filed under this section may be served upon any person who is not found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation.

(iii) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(H) METHOD OF SERVICE.—Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a person, including any legal entity, by—

(i) delivering a duly executed copy of such demand or petition to the individual or to any partner, executive officer, managing agent, or general agent of such person, or to any agent of such person authorized by appointment or by law to receive service of process on behalf of such person;

(ii) delivering a duly executed copy of such demand or petition to the principal office or place of business of the person to be served; or

(iii) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at its principal office or place of business.

(I) PROOF OF SERVICE.—

(i) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service.

(ii) In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(J) PRODUCTION OF DOCUMENTARY MATERIAL.—The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(K) SUBMISSION OF TANGIBLE THINGS.—The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge

of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(L) SEPARATE ANSWERS.—Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(M) TESTIMONY.—

(i) PROCEDURE.—

(I) OATH AND RECORDATION.—Any consumer protection agency investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness.

(II) TRANSCRIPTIONS.—The testimony shall be taken stenographically and transcribed.

(III) COPY TO CUSTODIAN.—After the testimony is fully transcribed, the consumer protection agency investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(ii) PARTIES PRESENT.—Any consumer protection agency investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his or her attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(iii) LOCATION.—The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the consumer protection agency investigator before whom the oral testimony of such person is to be taken and such person.

(iv) ATTORNEY REPRESENTATION.—

(I) IN GENERAL.—Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney.

(II) CONFIDENTIAL ADVICE.—The attorney may advise the person summoned, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(III) OBJECTIONS.—The person summoned or the attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection.

(IV) REFUSAL TO ANSWER.—An objection may properly be made, received, and entered upon the record when it is claimed that the person summoned is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination, but such person shall not otherwise object to or refuse to answer any question, and shall not otherwise interrupt the oral examination, directly or through such person's attorney.

(V) PETITION FOR ORDER.—If such person refuses to answer any question, a consumer protection agency may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(VI) BASIS FOR COMPELLING TESTIMONY.—If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(v) TRANSCRIPTS.—

(I) RIGHT TO EXAMINE.—After the testimony of any witness is fully transcribed, the consumer protection agency investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript.

(II) READING THE TRANSCRIPT.—The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness.

(III) REQUEST FOR CHANGES.—Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the consumer protection agency investigator with a statement of the reasons given by the witness for making such changes.

(IV) SIGNATURE.—The transcript shall be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(V) CONSUMER PROTECTION AGENCY ACTION IN LIEU OF SIGNATURE.—If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the consumer protection agency investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(vi) CERTIFICATION BY INVESTIGATOR.—The consumer protection agency investigator shall certify on the transcript that the witness was duly sworn by the investigator and that the transcript is a true record of the testimony given by the witness, and the consumer protection agency investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(vii) COPY OF TRANSCRIPT.—The consumer protection agency investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the consumer protection agency may for good cause limit such witness to inspection of the official transcript of his testimony.

(viii) WITNESS FEES.—Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(3) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(A) IN GENERAL.—Materials received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with regulations established by the consumer protection agency.

(B) DISCLOSURE TO CONGRESS.—No regulation established by a consumer protection agency regarding the confidentiality of materials submitted to, or otherwise obtained by, the consumer protection agency shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the consumer protection agency may prescribe regulations allowing prior notice to any party that owns or otherwise provided the material to the consumer protection agency and has designated such material as confidential.

(4) PETITION FOR ENFORCEMENT.—

(A) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon such person under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the consumer protection agency, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

(B) SERVICE OF PROCESS.—All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(5) PETITION FOR ORDER MODIFYING OR SETTING ASIDE DEMAND.—

(A) IN GENERAL.—Not later than 20 days after the service of any civil investigative demand upon any person under subsection (b), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any consumer protection agency investigator named in the demand, such person may file with the consumer protection agency a petition for an order by the consumer protection agency modifying or setting aside the demand.

(B) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the consumer protection agency, shall not run during the pendency of such petition at the consumer protection agency, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(C) SPECIFIC GROUNDS.—Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(6) CUSTODIAL CONTROL.—At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon such custodian by this section or regulation prescribed by the consumer protection agency.

(7) JURISDICTION OF COURT.—

(A) IN GENERAL.—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section.

(B) APPEAL.—Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

(c) HEARINGS AND ADJUDICATION PROCEEDINGS.—

(1) IN GENERAL.—A consumer protection agency may conduct hearings and adjudication proceedings with respect to any person in the manner prescribed by chapter 5 of title 5, United States Code in order to ensure or enforce compliance with—

(A) the provisions of this title, including any regulations prescribed by the consumer protection agency under this title; and

(B) any other Federal law that the consumer protection agency is authorized to enforce, including a consumer protection law, and any regulations or order prescribed thereunder, unless such Federal law specifically limits the consumer protection agency from conducting a hearing or adjudication proceeding and only to the extent of such limitation.

(2) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(A) ISSUANCE.—

(i) NOTICE OF CHARGES.—If, in the opinion of a consumer protection agency, any covered person is engaging or has engaged in an activity that violates a law, regulation, or any condition imposed in writing on the person by the consumer protection agency, the consumer protection agency may issue and serve upon the person a notice of charges with respect to such violation.

(ii) CONTENTS OF NOTICE.—The notice shall contain a statement of the facts constituting any alleged violation and shall fix a time and place at which a hearing will be held to determine whether an order to cease-and-desist there from should issue against the person.

(iii) TIME OF HEARING.—A hearing under this subsection shall be fixed for a date not earlier than 30 days nor later than 60 days after service of such notice unless an earlier or a later date is set by the consumer protection agency at the request of any party so served.

(iv) NONAPPEARANCE DEEMED TO BE CONSENT TO ORDER.—Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order.

(v) ISSUANCE OF ORDER.—In the event of such consent, or if upon the record made at any such hearing, the consumer protection agency shall find that any violation specified in the notice of charges has been established, the consumer protection agency may issue and serve upon the person an order to cease-and-desist from any such violation or practice.

(vi) INCLUDES REQUIREMENT FOR CORRECTIVE ACTION.—Such order may, by provisions which may be mandatory or otherwise, require the person to cease-and-desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation.

(B) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall take effect at the end of the 30-day period beginning on the date of the service of such order upon the covered person concerned (except in the case of a cease-and-desist order issued upon consent, which shall take effect at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the consumer protection agency or a reviewing court.

(C) DECISION AND APPEAL.—

(i) PLACE OF AND PROCEDURES FOR HEARING.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or home office of the person is located unless the person consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code.

(ii) TIME LIMIT FOR DECISION.—After such hearing, and within 90 days after the consumer protection agency has notified the parties that the case has been submitted to it for final decision, the consumer protection agency shall—

(I) render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue; and

(II) serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection.

(iii) MODIFICATION OF ORDER GENERALLY.—Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (D), and thereafter until the record in the proceeding has been filed as so provided, the consumer protection agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order.

(iv) MODIFICATION OF ORDER AFTER FILING RECORD ON APPEAL.—Upon such filing of the record, the consumer protection agency may modify, terminate, or set aside any such order with permission of the court.

(D) APPEAL TO COURT OF APPEALS.—

(i) IN GENERAL.—Any party to any proceeding under this subsection may obtain a review of any order served pursuant to this subsection (other than an order issued with the consent of the person concerned) by the filing in the court of appeals of the United States for the circuit in which the principal office of the covered person is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the consumer protection agency be modified, terminated, or set aside.

(ii) TRANSMITTAL OF COPY TO THE CONSUMER PROTECTION AGENCY.—A copy of such petition shall be forthwith transmitted by the clerk of the court to the consumer protection agency, and thereupon the consumer protection agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(iii) JURISDICTION OF COURT.—Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as otherwise provided be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the consumer protection agency.

(iv) SCOPE OF REVIEW.—Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code.

(v) FINALITY.—The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(E) NO STAY.—The commencement of proceedings for judicial review under subparagraph (D) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(3) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(A) ISSUANCE.—

(i) IN GENERAL.—Whenever the consumer protection agency determines that the violation specified in the notice of charges served upon a person pursuant to paragraph (2), or the continuation thereof, is likely to cause the person to be insolvent or otherwise prejudice the interests of consumers before the completion of the proceedings conducted pursuant to paragraph (2), the consumer protection agency may issue a temporary order requiring the covered person to cease-and-desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency or other condition pending completion of such proceedings.

(ii) OTHER REQUIREMENTS.—Any temporary order issued under this paragraph may include any requirement authorized under this section.

(iii) EFFECT DATE OF ORDER.—Any temporary order issued under this paragraph shall take effect upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the consumer protection agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the person, until the effective date of such order.

(B) APPEAL.—Within 10 days after the person concerned has been served with a temporary cease-and-desist order, the person may apply to the United States district court for the judicial district in which the home office of the covered person is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the person under paragraph (2), and such court shall have jurisdiction to issue such injunction.

(C) INCOMPLETE OR INACCURATE RECORDS.—

(i) TEMPORARY ORDER.—If a notice of charges served under paragraph (2) specifies, on the basis of particular facts and circumstances, that a person's books and records are so incomplete or inaccurate that the consumer protection agency is unable to determine the financial condition of that person or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that person, the consumer protection agency may issue a temporary order requiring—

(I) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(II) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under paragraph(2)(A).

(ii) EFFECTIVE PERIOD.—Any temporary order issued under clause (i)—

(I) shall take effect upon service; and

(II) unless set aside, limited, or suspended by a court in proceedings under subparagraph (B), shall remain in effect and enforceable until the earlier of—

(aa) the completion of the proceeding initiated under paragraph (2) in connection with the notice of charges; or

(bb) the date the consumer protection agency determines, by examination or otherwise, that the person's books and records are accurate and reflect the financial condition of the person.

(4) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(A) IN GENERAL.—The consumer protection agency may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the covered person is located, for the enforcement of any effective and outstanding notice or order issued under this section, and such court shall have jurisdiction and power to order and require compliance herewith.

(B) EXCEPTION.—Except as otherwise provided in this subsection, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order or to review, modify, suspend, terminate, or set aside any such notice or order.

(5) REGULATIONS.—The consumer protection agencies shall prescribe regulations establishing such procedures as may be necessary to carry out this section.

(d) LITIGATION AUTHORITY.—

(1) IN GENERAL.—If any person violates a provision of this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority, a consumer protection agency may commence a civil action against such person to impose a civil penalty or to seek all appropriate legal or equitable relief including a permanent or temporary injunction as permitted by law.

(2) REPRESENTATION.—A consumer protection agency may act in its own name and through its own attorneys in enforcing any provision of this title, regulations under this title, or any other law or regulation, or in any action, suit, or proceeding to which the consumer protection agency is a party.

(3) COMPROMISE OF ACTIONS.—A consumer protection agency may compromise or settle any action if such compromise is approved by the court.

(4) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under this title, any consumer protection law or any regulation thereunder, a consumer protection agency shall notify the Attorney General.

(5) FORUM.—Any civil action brought under this title may be brought in a United States district court or in any court of competent jurisdiction of a State in a district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to enjoin such person and to require compliance with this title, any consumer protection law or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority.

(6) TIME FOR BRINGING ACTION.—

(A) IN GENERAL.—Except as otherwise permitted by law, no action may be brought under this title more than 3 years after the violation to which an action relates.

(B) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(i) For purposes of this subsection, an action arising under this title shall not include claims arising solely under consumer protection laws.

(ii) In any action arising solely under a consumer protection law, a consumer protection agency may commence, defend, or intervene in the action in accordance with the requirements of that law, as applicable.

(e) RELIEF AVAILABLE.—

(1) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(A) JURISDICTION.—The court (or consumer protection agency, as the case may be) in an action or adjudication proceeding brought under this title or any consumer protection law shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of this title or any consumer protection law, including a violation of a regulation prescribed or order issued under this title or any consumer protection law.

(B) RELIEF.—Such relief may include—

(i) rescission or reformation of contracts;

(ii) refund of moneys or return of real property;

(iii) restitution;

(iv) compensation for unjust enrichment;

(v) payment of damages;

(vi) public notification regarding the violation, including the costs of notification;

(vii) limits on the activities or functions of the person; and

(viii) civil money penalties, as set forth more fully in paragraph (4).

(C) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this paragraph shall be construed as authorizing the imposition of exemplary or punitive damages.

(2) RECOVERY OF COSTS.—In any action brought by a consumer protection agency to enforce any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title or pursuant to any such authority, a consumer protection agency may recover its costs in connection with prosecuting such action if the consumer protection agency is the prevailing party in the action.

(3) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(A) Any person that violates any provision of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title shall forfeit and pay a civil penalty pursuant to this paragraph determined as follows:

(i) FIRST TIER.—For any violation of a final order or condition imposed in writing by a consumer protection agency, a civil penalty shall not exceed $5,000 for each day during which such violation continues.

(ii) SECOND TIER.—Notwithstanding clause (i), for any person that knowingly violates this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council under this title, a civil penalty shall not exceed $1,000,000 for each day during which such violation continues.

(B) MITIGATING FACTORS.—In determining the amount of any penalty assessed under subparagraph (A), the consumer protection agency or the court shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the person charged;

(ii) the gravity of the violation;

(iii) the severity of the risks to or losses of the consumer, which may take into account the number of products or services sold or provided;

(iv) the history of previous violations; and

(v) such other matters as justice may require.

(C) AUTHORITY TO MODIFY OR REMIT PENALTY.—The consumer protection agency may compromise, modify, or remit any penalty which may be assessed or had already been assessed under subparagraph (A). The amount of such penalty, when finally determined, shall be exclusive of any sums owed by the person to the United States in connection with the costs of the proceeding, and may be deducted from any sums owing by the United States to the person charged.

(D) NOTICE AND HEARING.—No civil penalty may be assessed with respect to a violation of this title, any consumer protection law, or any regulation prescribed or order issued by a consumer protection agency, the CFPS, or the Council, unless—

(i) the consumer protection agency gives notice and an opportunity for a hearing to the person accused of the violation; or

(ii) the appropriate court has ordered such assessment and entered judgment in favor of the consumer protection agency.

(f) REFERRALS FOR CRIMINAL PROCEEDINGS.—Whenever a consumer protection agency obtains evidence that any person, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the consumer protection agency shall have the power to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the consumer protection agency to disclose information.

(g) EMPLOYEE PROTECTION.—

(1) IN GENERAL.—No person shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has provided information to a consumer protection agency, the CFPS, or the Council, filed, instituted or caused to be filed or instituted any proceeding under this title, any consumer protection law, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this title.

(2) CONSUMER PROTECTION AGENCY REVIEW OF TERMINATION.—

(A) APPLICATION FOR REVIEW.—Any employee or representative of employees who believes that he has been terminated or otherwise discriminated against by any person in violation of paragraph (1) may, within 45 days after such alleged violated occurs, apply to a consumer protection agency for review of such termination or alleged discrimination.

(B) COPY TO RESPONDENT.—A copy of the application shall be sent to the person who is alleged to have terminated or otherwise discriminated against an employee, and such person shall be the respondent.

(C) INVESTIGATION.—Upon receipt of such application, the consumer protection agency shall cause such investigation to be made as the consumer protection agency deems appropriate.

(D) HEARING.—Any investigation under this paragraph shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation.

(E) NOTICE OF TIME AND PLACE FOR HEARING.—The parties shall be given written notice of the time and place of the hearing at least 5 days prior to the hearing.

(F) PROCEDURE.—Any hearing under this paragraph shall be of record and shall be subject to section 554 of title 5, United States Code.

(G) DETERMINATION.—

(i) IN GENERAL.—Upon receiving the report of such investigation, the consumer protection agency shall make findings of fact.

(ii) ISSUANCE OF DECISION.—If the consumer protection agency finds that there is sufficient evidence in the record to conclude that such a violation did occur, the consumer protection agency shall issue a decision, incorporating an order therein and the consumer protection agency's findings, requiring the party committing such violation to take such affirmative action to abate the violation as the consumer protection agency deems appropriate, including reinstating or rehiring the employee or representative of employees to the former position with compensation.

(iii) DENIAL OF APPLICATION.—If the consumer protection agency finds insufficient evidence to support the allegations made in the application, the consumer protection agency shall deny the application.

(H) JUDICIAL REVIEW.—An order issued by the consumer protection agency under this paragraph (2) shall be subject to judicial review in the same manner as orders and decisions are subject to judicial review under this title or any consumer protection law.

(3) COSTS AND EXPENSES.—Whenever an order is issued under this subsection to abate such violation, at the request of the applicant a sum equal to the aggregate amount of all costs and expenses (including attorney's fees) determined by the consumer protection agency to have been reasonably incurred by the applicant for, or in connection with, the application and prosecution of such proceedings shall be assessed against the person committing such violation.

(4) EXCEPTION.—This subsection shall not apply to any employee who acting without

discretion from the employer of such employee (or the employer's agent) deliberately violates any requirement of this title or any consumer protection law.

(h) EXCLUSION FOR PERSONS REGULATED BY A STATE INSURANCE REGULATOR.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any State insurance regulator to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any State insurance regulator. Except as provided in paragraphs (2) and (3), the Council and the CFPS shall have no authority to exercise any power to enforce this title with respect to a person regulated by any State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person described in such paragraph to the extent such person is engaged in any financial activity described in any subparagraph of section 4018(15) or is otherwise subject to any of the enumerated consumer laws or the authorities transferred under section 4018(6).

(3) PRESERVATION OF CERTAIN AUTHORITIES.—Nothing in this title shall be construed as limiting the authority of the Council or the CFPS from exercising powers under this Act with respect to a person, other than a person regulated by a State insurance regulator, who provides a product or service for or on behalf of a person regulated by a State insurance regulator in connection with a financial activity.

**SEC. 4016. COLLECTION OF DEPOSIT ACCOUNT DATA.**

(a) PURPOSE.—The purpose of this section is to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business and community development needs and opportunities.

(b) IN GENERAL.—

(1) RECORDS REQUIRED.—For each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution, the financial institution shall maintain records of the number and dollar amounts of deposit accounts of customers.

(2) GEO-CODED ADDRESSES OF DEPOSITORS.—The customers' addresses maintained pursuant to paragraph (1) shall be geo-coded so that data shall be collected regarding the census tracts of the residence or business location of the customers.

(3) IDENTIFICATION OF DEPOSITOR TYPE.—In maintaining records on any deposit account under this section, the financial institution shall also record whether the deposit account is for a residential or commercial customer.

(4) PUBLIC AVAILABILITY.—

(A) IN GENERAL.—The following information shall be publicly available on an annual basis—

(i) the address and census tracts of each branch, automated teller machine at which deposits are accepted, and other deposit taking service facility with respect to any financial institution;

(ii) the type of deposit account including whether the account was a checking or savings account; and

(iii) data on the number and dollar amounts of the accounts, presented by census tract location of the residential and commercial customers.

(B) PROTECTION OF IDENTITY.—In the publicly available data, any personally identifiable data element shall be removed so as to protect the identities of the commercial and residential customers.

(c) AVAILABILITY OF INFORMATION.—

(1) SUBMISSION TO AGENCIES.—The data required to be compiled and maintained under this section by any financial institution shall be submitted annually to the a Federal banking agency, in accordance with rules prescribed by the Federal banking agencies.

(2) AVAILABILITY OF INFORMATION.—Information compiled and maintained under this section shall be retained for not less than 3 years after the date of preparation and shall be made available to the public, upon request, in the form required under rules prescribed by the Federal banking agencies.

(d) FEDERAL BANKING AGENCY USE.—The Federal banking agencies—

(1) shall assess the distribution of residential and commercial accounts at such financial institution across income and minority level of census tracts; and

(2) may use the data for any other purpose as permitted by law.

(e) REGULATIONS AND GUIDANCE.—

(1) IN GENERAL.—The Federal banking agencies shall prescribe such regulations and issue guidance as may be necessary to carry out, enforce, and compile data pursuant to this section.

(2) DATA COMPILATION REGULATIONS.—The Federal banking agencies shall prescribe regulations regarding the provision of data compiled under this section to such agencies to carry out the purposes of this section and shall issue guidance to financial institutions regarding measures to facilitate compliance with the this section and the requirements of regulations prescribed under this section.

(f) DEFINITIONS.—For purposes of this section, and notwithstanding section 4018, the following definitions shall apply:

(1) CREDIT UNION.—The term ''credit union'' means a Federal credit union or a State-chartered credit union (as such terms are defined in section 101 of the Federal Credit Union Act).

(2) DEPOSIT ACCOUNT.—The term ''deposit account'' includes any checking account, savings account, credit union share account, and other type of account as defined by the consumer protection agencies.

(3) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors of the Federal Reserve System, the head of the agency responsible for chartering and regulating national banks, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, and the National Credit Union Administration; and the term ''Federal banking agencies'' means all of those agencies.

(4) FINANCIAL INSTITUTION.—The term ''financial institution''—

(A) has the meaning given to the term ''insured depository institution'' in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes any credit union.

**SEC. 4017. CONFIDENTIALITY.**

The Council, the Financial Institutions Examination Council, the CFPS, and the consumer protection agencies shall each issue regulations regarding the confidential treatment of information obtained from persons in connection with the exercise of such entity's authorities under this title. Such regulations shall, to the extent practicable, mirror the provisions provided for the confidential treatment of financial records under the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401).

**SEC. 4018. DEFINITIONS.**

For purposes of this title:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) BOARD OF GOVERNORS.—The term ''Board of Governors'' means the Board of Governors of the Federal Reserve System.

(3) CFPS.—The term ''CFPS'' means the Consumer Financial Protection Subcommittee established under section 4003.

(4) CONSUMER.—The term ''consumer'' means an individual or an agent, trustee, or representative acting on behalf of an individual.

(5) CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''consumer financial product or service'' means any financial product or service to be used by a consumer primarily for personal, family, or household purposes.

(6) CONSUMER PROTECTION LAWS.—The term ''consumer protection laws'' means each of the following:

(A) The Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.).

(B) The Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.)

(C) The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).

(D) The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e), 624, and 628.

(E) The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.).

(F) Subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t).

(G) Sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.).

(H) The Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.).

(I) The Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.).

(J) The Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.).

(K) The Truth in Lending Act (15 U.S.C. 1601 et seq.).

(L) The Truth in Savings Act (12 U.S.C. 4301 et seq.).

(7) CONSUMER PROTECTION AGENCY.—Except as provided in section 4015, the term ''consumer protection agency'' means—

(A) the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Office of Thrift Supervision;

(D) the Federal Deposit Insurance Corporation;

(E) the Federal Trade Commission;

(F) the National Credit Union Administration;

(G) the Department of the Treasury;

(H) the Department of Housing and Urban Development;

(I) the Securities and Exchange Commission; and

(J) the Commodity Futures Trading Commission.

(8) COUNCIL.—The term ''council'' means the Consumer Financial Protection Council established under section 2.

(9) COVERED PERSON.—

(A) IN GENERAL.—The term ''covered person'' means—

(i) any person who engages directly or indirectly in a financial activity, in connection with the provision of a consumer financial product or service; or

(ii) any person who, in connection with the provision of a consumer financial product or service, provides a material service to, or processes a transaction on behalf of, a person described in subparagraph (A).

(B) EXCEPTION.—The term ''covered person'' does not include a person regulated by a State insurance regulator.

(10) CREDIT.—The term ''credit'' means 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.

(11) CREDIT UNION.—The term ''credit union'' means a Federal credit union, State credit union, or State-chartered credit union

as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(12) DEPOSIT.—The term ''deposit''—

(A) has the same meaning as in section 3(l) of the Federal Deposit Insurance Act; and

(B) includes a share in a member account (as defined in section 101(5) of the Federal Credit Union Act) at a credit union.

(13) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, the provision of other services related to the acceptance of deposits, or the maintenance of deposit accounts;

(B) the acceptance of money, the provision of other services related to the acceptance of money, or the maintenance of members' share accounts by a credit union; or

(C) the receipt of money or its equivalent, as a consumer protection agency may determine by regulation or order, received or held by the covered person (or an agent for the person) for the purpose of facilitating a payment or transferring funds or value of funds by a consumer to a third party.

For the purposes of this title, the consumer protection agencies may determine that the term ''deposit-taking activity'' includes the receipt of money or its equivalent in connection with the sale or issuance of any payment instrument or stored value product or service.

(14) FEDERAL BANKING AGENCY.—The term ''Federal banking agency'' means the Board of Governors, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, or the National Credit Union Administration and the term ''Federal banking agencies'' means all of those agencies.

(15) FINANCIAL ACTIVITY.—The term ''financial activity'' means any of the following activities:

(A) Deposit-taking activities.

(B) Extending credit and servicing loans, including—

(i) acquiring, brokering, or servicing loans or other extensions of credit;

(ii) engaging in any other activity usual in connection with extending credit or servicing loans, including performing appraisals of real estate and personal property and selling or servicing credit insurance or mortgage insurance.

(C) Check-guaranty services, including—

(i) authorizing a subscribing merchant to accept personal checks tendered by the merchant's customers in payment for goods and services; and

(ii) purchasing from a subscribing merchant validly authorized checks that are subsequently dishonored.

(D) Collecting, analyzing, maintaining, and providing consumer report information or other account information by covered persons, including information relating to the credit history of consumers and providing the information to a credit grantor who is considering a consumer application for credit or who has extended credit to the borrower.

(E) Collection of debt related to any consumer financial product or service.

(F) Providing real estate settlement services, including providing title insurance.

(G) Leasing personal or real property or acting as agent, broker, or adviser in leasing such property if—

(i) the lease is on a non-operating basis;

(ii) the initial term of the lease is at least 90 days; and

(iii) in the case of leases involving real property, at the inception of the initial lease, the transaction is intended to result in ownership of the leased property to be transferred to the lessee, subject to standards prescribed by the consumer protection agencies.

(H) Acting as an investment adviser to any person (not subject to regulation by or required to register with the Commodity Futures Trading Commission or the Securities and Exchange Commission).

(I) Acting as financial adviser to any person, including—

(i) providing financial and other related advisory services;

(ii) providing educational courses, and instructional materials to consumers on individual financial management matters; or

(iii) providing credit counseling, tax-planning or tax-preparation services to any person.

(J) Financial data processing, including providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, or operating personnel), databases, advice, and access to such services, facilities, or databases by any technological means, if—

(i) the data to be processed or furnished are financial, banking, or economic; and

(ii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering.

(K) Money transmitting.

(L) Sale or issuance of stored value.

(M) Acting as a money services business.

(N) Acting as a custodian of money or any financial instrument.

(O) Any other activity that the consumer protection agencies define, by regulation, as a financial activity for the purposes of this title.

(P) Except that the term ''financial activity'' shall not include the business of insurance.

(16) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service'' means any product or service that, directly or indirectly, results from or is related to engaging in 1 or more financial activities.

(17) FOREIGN EXCHANGE.—The term ''foreign exchange'' means the exchange, for compensation, of currency of the United States or of a foreign government for currency of another government.

(18) INSURED DEPOSITORY INSTITUTION.—The term ''insured depository institution'' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(19) MONEY SERVICES BUSINESS.—The term ''money services business'' means a covered person that—

(A) receives currency, monetary value, or payment instruments for the purpose of exchanging or transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services, or other businesses that facilitate third-party transfers within the United States or to or from the United States; or

(B) issues payment instruments or stored value.

(20) MONEY TRANSMITTING.—The term ''money transmitting'' means the receipt by a covered person of currency, monetary value, or payment instruments for the purpose of transmitting the same to any third-party by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services.

(21) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of money, or monetary value (other than currency).

(22) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(23) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person who is—

(A) engaged in the business of insurance; and

(B) subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(24) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any futures commission merchant, commodity trading adviser, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, but only to the extent that the person acts in such capacity.

(25) PERSON REGULATED BY THE SECURITIES AND EXCHANGE COMMISSION.—The term ''person regulated by the Securities and Exchange Commission'' means—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is required to be registered under the Investment Advisers Act of 1940; or

(C) an investment company that is required to be registered under the Investment Company Act of 1940—

but only to the extent that the person acts in a registered capacity.

(26) PROVISION OF A CONSUMER FINANCIAL PRODUCT OR SERVICE.—The term ''provision of (or providing) a consumer financial product or service'' means the advertisement, marketing, solicitation, sale, disclosure, delivery, or account maintenance or servicing of a consumer financial product or service.

(27) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan'' shall have the meaning given such term in section 1503(8) of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(28) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.

(29) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands.

(30) STORED VALUE.—The term ''stored value'' means funds or monetary value represented in any electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and transferred electronically, and includes a prepaid debit card or product, or any other similar product, regardless of whether the amount of the funds or monetary value may be increased or reloaded.

**SEC. 4019. AUTHORIZATION OF APPROPRIATIONS.**

There is hereby authorized to be appropriated such sums as may be necessary to carry out this title.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Idaho (Mr. MINNICK) and a Member opposed each will control 20 minutes.

The Chair recognizes the gentleman from Idaho.

Mr. MINNICK. Madam Chair, we all support the goal of stronger, more uniform consumer protection regulation, but you don't achieve that by splitting

the responsibility between two regulators, in many cases thousands of miles apart, each with half the responsibility. And you compound that mistake by creating exemptions to the new regulation which create gaps and inconsistency.

Every regulation has some impact on both the solvency of a financial institution and on its customers. To split the responsibility between two inherently feuding regulators will lead to conflict, inaction, failure, and frustration.

My amendment is much superior. It creates a strong mandate for consumer protection in all of the existing regulators. Every regulator must have a division in charge of consumer protection reporting to a person with coequal responsibility for safety and soundness. The regulations themselves will be set by all of the major regulators, a council including regulators from the Secretary of the Treasury to the Federal Reserve to State Attorneys General. The staff for this council will be in the Treasury, and it will have rulemaking authority, but the existing regulators will have the responsibility for administration and enforcement.

Before I yield, I would like to thank the gentleman from Illinois, Congressman SCHOCK, and his legislative director, Mark Roman, for their leadership in forging a bipartisan coalition that yields this commonsense solution to this increasingly important problem.

Madam Chair, I yield 2 minutes to the gentleman from Oklahoma (Mr. BOREN).

Mr. BOREN. I thank the gentleman from Idaho for yielding.

I rise today in support of the Minnick-Schock-Boren-Bright-Childers-Shuler amendment.

Madam Chair, most everyone in this body agrees that following a period in American history where the Dow Jones Industrial Average lost almost 60 percent of its value, three of America's five major investment banks went broke, and the U.S. saw the largest number of commercial bank failures in four generations that the need to reform the way America's banking and financial regulatory system works is important. The question, though, is: Just how many new government agencies are necessary to accomplish this task? If we create a new Federal agency to regulate consumer credit, will it improve the current regulatory framework or will it end up costing American jobs? I think we need to be cautious in our approach, so today I rise in an effort to streamline this piece of legislation.

The amendment currently before this House will do a few simple things:

First, it will change the framework of the legislation by locating a newly created Consumer Financial Protection Council within the Department of the Treasury rather than creating an entirely new Federal agency to oversee the financial system.

Second, it will amend the legislation to take the power of regulating trillions of dollars of financial transactions out of the hands of one politically appointed administrator and instead create a Consumer Financial Protection Council charged with promoting consumer protection for users of financial products and services. By consolidating the expansion of government created by this regulatory bill, we can properly get the financial and banking system back on its feet without creating another new Federal agency designed to solve America's problems.

In the interest of good government, this legislation must be focused and directed at what caused the problem and not about settling old scores over business practices.

I urge my colleagues to support this bipartisan amendment.

Mr. FRANK of Massachusetts. Madam Chair, I rise to claim the time in opposition.

The Acting CHAIR. The gentleman from Massachusetts is recognized for 10 minutes.

Mr. FRANK of Massachusetts. I now yield 2 minutes to one of the most thoughtful members of the Financial Services Committee, whom we will greatly miss when he retires, the gentleman from Kansas (Mr. MOORE).

Mr. MOORE of Kansas. Madam Chair, I rise today to oppose the amendment offered by my colleague, Mr. MINNICK. I know my friend and colleague offers this alternative to the Consumer Financial Protection Agency in the spirit of wanting to do all we can to better protect consumers. I certainly share that view, but I don't support this proposed Consumer Financial Protection Council as the best way to accomplish that objective.

This amendment effectively eliminates 4 days of thoughtful markup for CFPA and nearly 50 amendments offered by Republicans and Democrats to improve the bill. I am concerned the amendment before us may be unconstitutional, empowering a three-member State panel to decide how States will take a position that affects their consumer protections. This amendment creates a bureaucratic nightmare. In committee, we worked to focus CFPA on the bad actors that created the financial crisis, not the responsible community banks and credit unions that were lending responsibly and doing what they were asked.

The exceptions for merchants and nonfinancial institutions makes sense as well. CFPA, as currently drafted, will help level the playing field for all community banks and credit unions. The new Consumer Protection Agency will instead be focused on the big banks and nonbanks, like mortgage brokers, that evaded strong supervision and gave us the subprime mortgage crisis that led to the broader financial crisis.

It's time to put an end to those greedy enough to lie, cheat, and steal to the detriment of their competitors, their customers, and our economy. Like our parents and grandparents who gave us Federal Deposit Insurance following the Great Depression, now is the time to give our children and grandchildren strong consumer protections and create the CFPA.

I urge my colleagues to vote ''no'' on the Minnick amendment and vote ''yes'' on the underlying bill.

Mr. MINNICK. May I inquire as to how much time I have remaining?

The Acting CHAIR. The gentleman from Idaho has 6 minutes remaining.

Mr. MINNICK. I yield 2 minutes to the gentleman from Illinois (Mr. SCHOCK).

Mr. SCHOCK. Madam Chair, first, I wish to thank the thoughtful gentleman from Idaho for his work on this important amendment. Clearly, the fact that we are debating this amendment towards the end of this piece of legislation speaks to the support for it, and I truly hope that a majority of our colleagues join together in supporting this amendment.

A couple of thoughts. Last week, the President hosted a job summit here. We go back home every weekend and the prevailing concern on the minds of our voters and our constituents is jobs. They're concerned about double-digit employment, they're upset with the greed and the lack of oversight that has been provided. And so, rightfully so, this body has tried to rein in some of that lack of regulation and tried to put forward a thoughtful program.

I know that the chairman of this committee is doing what he believes is best. But the fact of the matter is we need to look to those who are hurting. We need to look to those who are the job creators in this economy and ask: How will this affect them in their effort to employ people? Well, the fact of the matter is this is going to hurt our economy. This is going to lead to fewer jobs.

The goal of this CFPA is to lead to improvement in the marketplace for the American people. However, consolidating the power into one bureaucratic appointee, creating a $1 billion dollar agency, adding to our national debt, increasing taxes, restricting lending, and costing small businesses to shed millions of jobs hardly justifies itself.

This agency would make it more difficult for lenders to offer services and products that are important to small businesses. At a time when the economy is still struggling to recover, the last thing Congress ought to consider is an additional layer of regulation that will discourage new job creation.

The University of Chicago just this week released a study that they suggest the CFPA, as it stands, would increase consumer interest rates by more than 1.6 percentage points, consumer borrowing would be reduced by at least 2.1 percent, and net new job creation would fall 4 percent.

Mr. FRANK of Massachusetts. Madam Chair, I now recognize a strong advocate of a responsible policy towards the business community, the

gentlewoman from Illinois (Ms. BEAN) for 2 minutes.

Ms. BEAN. Madam Chair, I rise in opposition to the amendment and in support of the underlying bill.

While I am opposed to the gentleman from Idaho's amendment, I want to commend him on his leadership on comprehensive financial regulatory reform. We have worked closely on many issues in committee, and I appreciate the expertise he brings to these complicated issues before us.

Reforming our financial system is vitally important to creating a functional, sustainable financial system that American families and businesses can count on. We must not fail to enact adequate safeguards so that the mistakes of the past do not reoccur. Topping our to-do list should be the enactment of strong consumer financial protections that will keep our constituents safe as they rehabilitate their trust in our ability to effectively monitor America's financial health.

In order to accomplish this goal, we need an independent agency whose sole purpose is to protect and empower consumers to make informed financial decisions. The new CFPA, or Consumer Financial Protection Agency, would go a long way towards that end, restoring vital protections that were absent and duly needed during the buildup to America's recent financial fallout.

Since CFPA was introduced in July, the committee has made significant improvements to this bill. One of the initial concerns we heard was that companies who do not engage in consumer financial business would be regulated by the CFPA. We fixed that. Merchants, retailers, doctors, Realtors, and others—some suggested the butcher, the baker, the candlestick maker—let's be clear, they're exempt from CFPA as was intended and as they should be.

We address concerns we heard from banks and credit unions. Small and mid-size banks and credit unions under $10 billion in assets will not be subject to direct CFPA examination. Instead, there is a requirement now for coordination with the CFPA and the prudential regulator for those who are subject to direct CFPA examination.

After the manager's agreement reached this week, the ability of national banks and Federal savings associations to operate under a uniform national standard of rules, where appropriate, is preserved. But functional regulators failed to prioritize consumer protections and protect our constituents.

The Acting CHAIR. The gentlewoman's time has expired.

Mr. FRANK of Massachusetts. I yield the gentlewoman an additional 30 seconds.

Ms. BEAN. The CFPA will create a centralized and independent framework, reducing inefficiencies and bureaucracy across multiple agencies. They will have the expertise, resources, and mission to update consumer financial protection laws and protect our constituents from abusive and unfair financial products and services. Mr. MINNICK's amendment takes a different approach. What our consumers need is best-in-class protections for investors, and Americans deserve no less.

I urge my colleagues to oppose this amendment and support this historic underlying legislation and the CFPA it creates.

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Mr. MINNICK. I yield 1½ minutes to the gentleman from Delaware (Mr. CASTLE).

Mr. CASTLE. I thank the gentleman from Idaho for yielding.

Madam Chair, I rise in very strong support of this bipartisan amendment to create a Consumer Financial Protection Council which, of course, I am pleased to cosponsor. This amendment strikes the right balance in promoting strong consumer protections while ensuring the safety and soundness of our Nation's financial system.

I am convinced that the current language in the bill threatens to expand the reach of the Federal Government, to limit innovation, to restrict choices of financial products, and to interfere with day-to-day activities of small business. Utilizing a council of existing regulators is a cost-effective and responsible approach to achieving the same goals as intended by the Consumer Financial Protection Agency.

Our amendment establishes a council of existing regulators, which we know as the Treasury, Fed, OCC, FDIC, et cetera, instead of an entirely new agency and bureaucracy with all of the costs and attendant bureaucracy that would be involved with that. Utilizing a council balances power instead of using a single politically appointed administrator.

I would hope that everybody in the Chamber would support this change by the gentleman from Idaho. I think the underlying legislation has some problems. There are some cost issues, and there are probably some job issues and other things we have to worry about, but I think this particular change which is in this amendment is key to progressing in a way that would protect consumers but that would make sure that we are not distracting from the world of business in terms of commerce and banking in the United States of America.

Mr. FRANK of Massachusetts. I yield myself 4½ minutes.

Madam Chair, the author of the amendment, I thought, began—or it was one of the speakers. Maybe it was the gentleman from Oklahoma who said we don't need a new agency. Well, he apparently didn't get too far into the bill.

On lines 7 through 10 of page 1, There is hereby established the Consumer Financial Protection Council as an independent establishment of the executive branch.

So it creates a new agency—a monstrous one. It is a 12-headed council which will have its own staff assigned under this amendment by Treasury. Then within each of the 12 agencies, a new position is created—a director of consumer affairs. So you will have 12 new positions staffed by the Treasury, with no limitations on how that's done, and this new council. It is also unwieldy.

One of the responsibilities of the consumer agency will be to issue rules to prevent the kind of abuse of mortgages that had such a contributing role to our crisis. This bill says, yes, there will be such rules. They will be adopted by the 12-member council. They will vote on those. The chairman of the Commodities Future Trading Commission will have a vote on setting mortgage rates. The chairman of the Securities and Exchange Commission will help set mortgage rates. Other agencies without any particular involvement there will help set mortgage rates.

Now, the 12 agencies that make up this bureaucratic version of the Christmas song will include the agency that has more responsibility for consumer regulation today than any other—the Federal Reserve system. Those who have said, We don't like what the Federal Reserve does, should understand that the largest single loser of authority, by far, in the bill that the committee has brought forward is the Federal Reserve. The Federal Reserve has been the primary consumer regulator under this bill. It still will be under this amendment. The Federal Reserve will retain all of its powers because you have the council, but you also will have much of this done by the independent regulator.

So, if you think the Federal Reserve has done a good job as a consumer regulator and if you don't want to diminish its powers, then you ought to vote for this bill.

Our bill also doesn't just deal with the Federal powers. Frankly, we were respectful of the role of the community banks, which you have not heard from in large opposition over this. In fact, the independent community banks, until we get to bankruptcy, are going to be supportive of this bill. I understand they have a problem with that.

Much of the problem we have today is with the nonbanks—with the mortgages issued outside of banks, with the payday lenders, with the check cashers, with the people who do remittances. Many of them are honorable, but it's a largely unregulated operation. We give specific authority to regulate. What this says is the status quo is fine with regard to that. Arguably, the FTC has some jurisdiction over it. It hasn't been exercised very well.

So, if you want to do something about payday lenders and check cashers and remittances, then you'll want to vote for the committee version and not for this 12-member amendment. Maybe some of the new consumer directors in each of the 12 agencies will work this out, but you'll have

to wait for this 12-member body to vote on these things.

I do want to address one particular issue, which is: Well, what about safety and soundness? The notion that adequate consumer protection somehow detracts from safety and soundness is at the heart of some of our disagreement. In effect, what they are saying is, you know, we're going to have to water down consumer protection. If you get somebody who takes it seriously, it might impinge on safety and soundness. In fact, it has been the absence of consumer protection that has caused safety and soundness problems.

It was the refusal of the Federal Reserve, whose authority is preserved in the amendment of the gentleman from Idaho—they were given authority by this Congress in 1994 to regulate mortgages with the Homeowners Equity Protection Act. They flatly refused to use it. Because they would not do consumer protection, safety and soundness suffered. It didn't thrive.

There are other examples. The failure to adequately protect people in the credit card area contributes to problems. It does not diminish them. So the argument is very, very clear.

Now, it is true, by the way, that the Federal Reserve began to do some consumer protection recently, which was only after we started talking about this bill. This is explicitly what is in the bill. Implicitly what they are saying is: Keep consumer protection subordinated to bank regulation, and you will perpetuate the current problem.

Mr. MINNICK. Madam Chair, how much time do I have remaining?

The Acting CHAIR. The gentleman has 2½ minutes remaining.

Mr. MINNICK. I yield 30 seconds to the gentleman from California (Mr. CAMPBELL).

Mr. CAMPBELL. Madam Chair, we need to change some things so we don't face financial collapse. We can change those things without creating an entirely new agency—spending billions of new dollars, hiring thousands of new bureaucrats, housing them in a new building, and creating a conflict between the safety and soundness of banks and consumer protection.

The underlying bill creates all of those problems. This amendment accomplishes consumer protection without all of that. Support this amendment.

Mr. FRANK of Massachusetts. I have one remaining speaker, and since I have the right to close, I will reserve the balance of my time.

Mr. MINNICK. I yield 30 seconds to the gentleman from New Jersey (Mr. LANCE).

Mr. LANCE. Madam Chair, the current regulatory structure is not lacking authority. The Federal Reserve and the other banking agencies had all of the powers needed to address problems in consumer protection. What was lacking was coordination, improved disclosure, and an ability to fill the gaps in the system.

This amendment solves those deficiencies without installing a new bureaucracy that would make rules with little or no input from the cops on the beat—the banking agencies. That is why I am strongly supportive of Mr. MINNICK's amendment.

Mr. FRANK of Massachusetts. Since I am the one and final speaker, I continue to reserve the balance of my time.

Mr. MINNICK. I yield 30 seconds to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Chair, I rise in strong support of this amendment offered by my colleague from Idaho, which is similar to one that I offered during the Financial Services Committee markup. This amendment is a bipartisan, commonsense alternative to provisions in the underlying bill that would do a disservice to consumers.

One of the lessons that we have learned throughout this process is that bigger, uncoordinated government does not work when it comes to protecting consumers and regulating financial institutions.

Madam Chair, I rise in support of the amendment offered by my colleague from Idaho. Similar to one I offered during a Financial Services Committee markup, this amendment is a bipartisan, commonsense alternative to provisions in the underlying bill that would do a disservice to consumers.

What's the answer to the financial meltdown? How do we prevent it from happening again? What's not the answer is to create another federal agency. We already have the OCC, the OTS, the NCUA, the FDIC, the FTC, the SEC, the Fed, and the list goes on. The underlying bill would layer on a new federal bureaucracy that would allow five D.C. bureaucrats to dictate what financial products and services can be offered to consumers by anyone—from the church offering a funeral payment plan to a plumber charging to fix the kitchen sink.

The personalized services offered by your local 100-year-old community banks, churches, or plumber didn't create the financial crisis. Did our local 100-year-old community banks, churches, or your plumber create the mess? No. But all could fall under the burden of new regulations and taxes imposed by a new agency.

One of the lessons we've learned throughout this process is that bigger, uncoordinated government does not work when it comes to protecting consumers and regulating financial institutions. Instead, it only creates more cracks, confusion, and costs for consumers.

Americans are calling for stronger, smarter consumer protections. But that doesn't mean they want government to run their lives or the businesses in their communities. Nor do they want bigger government, more spending, and limited choice.

Some Members of this body think the government knows best. Others of us believe that with the right information, proper transparency, and full disclosure, families can and do make their own financial decisions. They don't need Big Brother to do it for them.

My colleague from Idaho offers a proposal today that answers the question: what about the consumer? His amendment codifies, expands, and energizes an existing body, a council of regulators, and charges it with a clear mission to better protect consumers. It establishes a mechanism for creating uniform consumer protection rules, maintains enforcement by prudential regulators, utilizes existing regulatory framework with no new bureaucracy or cost to taxpayers or small businesses, and it maintains national standards.

I urge my colleagues to support this amendment.

Mr. MINNICK. I yield 30 seconds to the gentleman from Washington (Mr. REICHERT).

Mr. REICHERT. I thank the gentleman.

Madam Chair, the choice is simple here. We can create a new, massive government bureaucracy, empower yet another czar to oversee our entire financial system, which will cost taxpayers millions more of their hard-earned money, or we can pass this amendment so that experienced regulators can better enforce the laws to protect our consumers from abuse while using existing resources. The choice is clear. Support this bipartisan, commonsense amendment that modernizes our regulatory system and helps Americans thrive in the 21st century.

Mr. MINNICK. Madam Chair, how much time is remaining?

The Acting CHAIR. The gentleman has 30 seconds remaining.

Mr. MINNICK. Madam Chair, the CBO has scored the total cost of my council and the components in the various agencies as less than $50 million. That compares to a massive new Federal bureaucracy they have scored at $4.6 billion.

How many times, Madam Chair, are we going to create a massive, new Federal bureaucracy to deal with an important priority? First, it was the expansion of the EPA and cap-and-trade to deal with climate change.

The Acting CHAIR. The time of the gentleman has expired.

Mr. FRANK of Massachusetts. I yield 1½ minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Ladies and gentlemen of the House, I want to, first of all, thank Mr. MINNICK. Mr. MINNICK is an extraordinarily able Member of this body, and he represents his district and our country well as a Member of the Congress of the United States.

This amendment, I think, has brought up an important discussion on the perspectives that we all have. I am one of those who believes that previous administrations had two very deep failures:

One was fiscal irresponsibility. We did not pay for what we bought, even at times when we said the economy was in good shape. We continued to borrow at record rates, taking a $5.6 trillion surplus and turning it into a $10 trillion deficit.

The other major failure, I think, of the previous administration was regulatory neglect. It had the power, as

Chairman FRANK has just pointed out, in a 1994 bill, to intervene, to try to put a check on two things—number one, on subprime lending. It did not. Mr. Greenspan testified just a couple of years ago that he thought that it was a mistake. He thought people would not take risks beyond that which were appropriate, and therefore, did not step in to regulate the subprime market. As a result, we confronted crisis.

The second big bipartisan mistake was with the Clinton administration and the Republican Congress. The Clinton administration was, obviously, led by President Clinton and Phil Gramm in the Senate. They said, We don't need to look at the derivatives market. The derivatives market will take care of itself. The head of the CFTC advised heavily and tried on her own authority, because she had the authority, to regulate the derivatives market.

The Congress stepped in, and I think I probably voted for the bill. It was an extraordinary mistake on my part. Phil Gramm led the effort which said, No, we don't need to impede this robust market that was apparently making all of us so much money.

Now, Mr. FRANK advises me—and I, frankly, am not an expert on it—that most of the employees of which we are talking are going to be transferred employees, not new employees.

On regulatory neglect, I think the administration did this: They said, essentially, The free market left to its own devices will grow the economy and will create jobs, and we ought not to impede that growth and that expansion. As a result of taking the referee off the field, all the little guys got trampled on. That's not unusual. I guarantee you, if you take the referee off the football field, the split end is going to leave a second before the ball is hiked, not because the split end is a bad person but because the split end is in a competitive field and wants to take an advantage. We don't have to cast aspersions here, but people want to take advantage.

The philosophy of the Bush administration was: Don't get in the way. Regulation is bad. It undermines business. It undermines growth. Your no-cost-jobs program at its heart says, Get out of the way. Reduce regulation. We have a real difference on this issue.

Franklin Roosevelt came in and said, The reason we had a stock market crash is because there were no referees. Under his leadership, we created a lot of referees. Very frankly, for 60 or 70 years, they kept this country pretty much on track, but we got way off track. My friends, when you wring your hands about the cost of this referee, which is called the Consumer Financial Protection Agency—and I don't accept the costs that you use, but let's say there is a significant cost. Let's say it's a couple of billion dollars. You say it's $4 billion. Let's just say, for the sake of argument, that it's a couple of billion dollars.

□ 1200

It pales into insignificance in the $1.5 trillion that we have borrowed to get this country out of the deep, deep, deep hole caused by the failure to regulate properly. And it wasn't the rich guys on Wall Street that paid that price; it was every one of our taxpayers that paid that price.

So when you talk about cost, the cost of doing nothing, the cost of not having a referee on the field, skews the game so badly that the little guys, the guys who sent us here, the guys who asked us to protect them from those over which they have no power to protect, they said, Protect us.

That is what this debate is about. The administration has sent down and said, Look, the SEC has its responsibility, the FDIC has its responsibility, CFTC has its responsibility, all have responsibility to make sure that our economy can grow, that trading markets can be open, honest, transparent and fair.

They look to the people who are in those markets. Most of the people are not in those markets. They are our people, the little people, the average guy who goes to work, works hard, who tries to pay his mortgage, keep his family fed and clothed and his kids educated.

He doesn't know about what all these guys are doing in the derivatives market. Nobody knew what was going on. The people who were investing in the derivatives market didn't know what was going on. There was no oversight.

Madam Chair, the distinguished lady from Prince George's County, Maryland; Montgomery County, DONNA EDWARDS, as we know, one of the central causes of our economic crisis, as I have said, was abusive consumer lending, signing Americans up for loans that they had no way of paying back. Nobody said, Time out; you're offsides; penalty. Nobody said that.

Why? Because if we did that, that would impede business. That would undermine the growth of this free market economy. That's why we have antitrust laws, so that we don't have some big guy ultimately take it all, because they can underprice and shove out. We saw that with, frankly, our friends in Microsoft who did an extraordinary job in building our economy, but at some point in time said, Time out, you've got to have competitors in this business.

For years, that practice went ignored by Washington regulators. And for a financial sector that placed massive bets on subprime mortgages, the results were eventually and tragically, for our people, catastrophic. The same abusive practices are at work in payday lending, in money transfers, and in many credit card policies, as Chairman FRANK has so ably pointed out.

In each case, Americans can wind up trapped in debt. While we do expect responsibility from anyone taking out a loan, we also must ensure that those loans are fair, transparent and written in plain language.

I'm a Georgetown lawyer. I think I'm reasonably bright. I've gone to real estate settlements and we have all gotten these forms and disclosures. I bet there is nobody here who has gone to a settlement who has read all those papers. Period. I think they are way too much paper, because I don't think, even if they read it they would understand it. Very frankly, if they read it, understood it and didn't like paragraph 5, called up their lender and said, I don't like paragraph 5, the lender would say, That's fine, you don't get the money. You sign it or else.

They're counting on us. This is a time when they are counting on us. This is a time when we can respond. That is exactly what the Consumer Financial Protection Agency would do. That is its purpose, to protect them.

I understand there are concerns about it, and I congratulate Mr. MINNICK for raising this issue and I appreciate his perspective. I simply disagree. It would take up the oversight responsibility that I think has been abandoned. It would safeguard consumers from exploitation and it would protect our economy from another collapse.

On the face of it, abandoning the CFPA and replacing it with a Consumer Financial Protection Council sounds like a superficial change, but in my opinion it is a very clear substantive change and not one that I would support. The council would be made up of 12 existing regulators who have already demonstrated, not the individuals, but the institutions, that they did not step up to the plate and say, you're offside; there's a penalty.

Rather than concentrating a wide range of oversight functions in a single body as a CFPA would do, the council would be an unwieldy and slow-moving bureaucracy. We talk about bureaucracy, we want somebody to focus and have a singular responsibility of making sure people don't get offsides so the little guys get hurt. It would not enhance, in my opinion, national consumer protection laws. It would undo this bill's expanded protections over the abusive practices that endanger the economic security of millions. Those abusive practices did lasting damage to Americans' lives, and we cannot let them down by watering down this bill.

I want to congratulate Chairman FRANK. I want to congratulate the members of the committee on both sides of the aisle. This, I think, is a critical decision that we will make. Americans sent us here to, in effect, be their referee, to call time out, to say we want to make sure the game is fair. We want to make sure that the little guy doesn't get hurt, with all due respect to my friend, who I think does an extraordinary job. On this we disagree.

I ask the Members of this House to reject the Minnick amendment.

The Acting CHAIR. All time for debate has expired.

The question is on the amendment offered by the gentleman from Idaho (Mr. MINNICK).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. FRANK of Massachusetts. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Idaho will be postponed.

AMENDMENT NO. 36, AS MODIFIED, OFFERED BY MR. BACHUS

The Acting CHAIR. It is now in order to consider amendment No. 36 printed in House Report 111–370, as modified by the order of the House of December 10, 2009.

Mr. BACHUS. Madam Chair, I have an amendment at the desk made in order under the rule.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment in the nature of a substitute offered by Mr. BACHUS, as modified:

Strike all after the enacting clause and insert the following:

**SEC. 1. SHORT TITLE.**

This Act may be cited as the ''Consumer and Taxpayer Protection Act of 2009''.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:


Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—NO MORE BAILOUTS ACT

Sec. 1001. Short title.
Sec. 1002. Amendments to title 28 of the United States Code.
Sec. 1003. Amendments to title 11 of the United States Code.
Sec. 1004. Effective date; application of amendments.
Sec. 1005. Reforms of section 13 emergency powers.
Sec. 1006. Establishment of Market Stability and Capital Adequacy Board.
Sec. 1007. Functions of Board.
Sec. 1008. Powers of Board.
Sec. 1009. Responsibilities of Federal functional regulators.
Sec. 1010. Staff of Board.
Sec. 1011. Compensation and travel expenses.

TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL

Sec. 2001. Short title.
Sec. 2002. Definitions.
Sec. 2003. Financial Institutions Consumer Protection and Examination Council.
Sec. 2004. Office of consumer protection.
Sec. 2005. State enforcement authority.
Sec. 2006. Unfair or deceptive acts or practices authority transferred.
Sec. 2007. Equality of consumer protection functions; Consumer protection divisions.
Sec. 2008. Prohibition on charter conversions while under regulatory sanction.

TITLE III—ANTI-FRAUD PROVISIONS

Sec. 3001. Authority to impose civil penalties in cease and desist proceedings.
Sec. 3002. Formerly associated persons.
Sec. 3003. Collateral bars.
Sec. 3004. Unlawful margin lending.
Sec. 3005. Nationwide service of process.
Sec. 3006. Reauthorization of the Financial Crimes Enforcement Network.
Sec. 3007. Fair fund improvements.

TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

Sec. 4001. Short title.

Subtitle A—Amendments to the Commodity Exchange Act

Sec. 4100. Definitions.
Sec. 4101. Swap repositories.
Sec. 4102. Margin for swaps between swaps dealers and major swap participants.
Sec. 4103. Segregation of assets held as collateral in swap transactions.

Subtitle B—Amendments to the Securities Exchange Act of 1934

Sec. 4201. Definitions.
Sec. 4202. Swap repositories.
Sec. 4203. Margin requirements.
Sec. 4204. Segregation of assets held as collateral in swap transactions.

Subtitle C—Common Provisions

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Sec. 7001. Short title.
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Sec. 7003. Termination of current conservatorship.
Sec. 7004. Limitation of enterprise authority upon emergence from conservatorship.
Sec. 7005. Requirement to periodically renew charter until wind down and dissolution.
Sec. 7006. Required wind down of operations and dissolution of enterprise.

TITLE VIII—FEDERAL INSURANCE OFFICE

Sec. 8001. Short title.
Sec. 8002. Federal Insurance Office established.
Sec. 8003. Report on global reinsurance market.
Sec. 8004. Study on modernization and improvement of insurance regulation in the United States.


## TITLE I—NO MORE BAILOUTS ACT

**SEC. 1001. SHORT TITLE.**

This title may be cited as the ''No More Bailouts Act of 2009''.

**SEC. 1002. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.**

Title 28 of the United States Code is amended—

(1) in section 1408 by striking ''section 1410'' and inserting ''sections 1409A and 1410'',

(2) by inserting after section 1409 the following:

**''§ 1409A. Venue of cases involving non-bank financial institutions**

''A case under chapter 14 may be commenced in the district court of the United States for the district—

''(1) in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary, if a Federal Reserve Bank is located in that district;

''(2) if venue does not exist under paragraph (1), in which there is a Federal Reserve Bank and in a Federal Reserve district in which the debtor has its principal place of business in the United States, principal assets in the United States, or in which there is pending a case under title 11 concerning the debtor's affiliate or subsidiary; or

''(3) if venue does not exist under paragraph (1) or (2), in which there is a Federal Reserve Bank and in a Federal circuit adjacent to the Federal circuit in which the debtor has its principal place of business or principal assets in the United States.'', and

(3) by amending the table of sections of chapter 87 of such title to insert after the item relating to section 1408 the following:

''1409A. Venue of cases involving non-bank financial institutions.''.

**SEC. 1003. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.**

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (26) the following:

''(26A) The term 'functional regulator' means the Federal regulatory agency with the primary Federal regulatory authority over the debtor, such as an agency listed in section 509 of the Gramm-Leach-Bliley Act.'',

(2) by redesignating paragraphs (38A) and (38B) as paragraphs (38B) and (38C), respectively,

(3) by inserting after paragraph (38) the following:

''(38A) the term 'Market Stability and Capital Adequacy Board' means the entity established in section 1006 of the No More Bailouts Act of 2009.'', and

(4) by inserting after paragraph (40) the following:

''(40A) The term 'non-bank financial institution' means an institution the business of which is engaging in financial activities that is not an insured depository institution.''.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''13'' and inserting ''13, and 14'',

(2) by redesignating subsection (k) as subsection (l), and

(3) by inserting after subsection (j) the following:

''(k) Chapter 14 applies only in a case under such chapter.''.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2) by striking ''or'' at the end,

(B) in paragraph (3) by striking the period at the end and insert and inserting ''; or'', and

(C) by adding at the end the following:

''(4) a non-bank financial institution that has not been a debtor under chapter 14 of this title.'',

(2) in subsection (d) by striking ''or commodity broker'' and inserting '', commodity broker, or a non-bank financial institution'', and

(3) by adding at the end the following:

''(i) Only a non-bank financial institution may be a debtor under chapter 14 of this title.''.

(d) INVOLUNTARY CASES.—Section 303 of title 11, the United States Code, is amended—

(1) in subsection (a) by striking ''or 11'' and inserting '', 11, or 14'', and

(2) in subsection (b) by striking ''or 11'' and inserting '', 11, or 14''.

(e) OBTAINING CREDIT.—Section 364 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding any other provision of this section, the trustee may not, and the court may not authorize the trustee to, obtain credit, if the source of that credit either directly or indirectly is the United States.''.

(f) CHAPTER 14.—Title 11, United States Code, is amended—

(1) by inserting the following after chapter 13:

**''CHAPTER 14—ADJUSTMENT TO THE DEBTS OF A NON-BANK FINANCIAL INSTITUTION**

''1401. Inapplicability of other sections.
''1402. Applicability of chapter 11 to cases under this chapter.
''1403. Prepetition consultation.
''1404. Appointment of trustee.
''1405. Right to be heard.
''1406. Right to communicate.
''1407. Exemption with respect to certain contracts or agreements.
''1408. Conversion or dismissal.

**''§ 1401. Inapplicability of other sections**

''Except as provided in section 1407, sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561 do not apply in a case under this chapter.

**''§ 1402. Applicability of chapter 11 to cases under this chapter**

''With the exception of sections 1104(d), 1109, 1112(a), 1115, and 1116, subchapters I, II, and III of chapter 11 apply in a case under this chapter.

**''§ 1403. Prepetition consultation**

''(a) Subject to subsection (b)—

''(1) a non-bank financial institution may not be a debtor under this chapter unless that institution has, at least 10 days prior to the date of the filing of the petition by such institution, taken part in the consultation described in subsection (c); and

''(2) a creditor may not commence an involuntary case under this chapter unless, at least 10 days prior to the date of the filing of the petition by such creditor, the creditor notifies the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board of its intent to file a petition and requests a consultation as described in subsection (c).

''(b) If the non-bank financial institution, the functional regulator, and the Market Stability and Capital Adequacy Board, in consultation with any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, certify that the immediate filing of a petition under section 301 or 303 is necessary, or that an immediate filing would be in the interests of justice, a petition may be filed notwithstanding subsection (a).

''(c) The non-bank financial institution, the functional regulator, the Market Stability and Capital Adequacy Board, and any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor shall engage in prepetition consultation in order to attempt to avoid the need for the non-bank financial institution's liquidation or reorganization in bankruptcy, to make any liquidation or reorganization of the non-bank financial institution under this title more orderly, or to aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Such consultation shall specifically include the attempt to negotiate forbearance of claims between the non-bank financial institution and its creditors if such forbearance would likely help to avoid the commencement of a case under this title, would make any liquidation or reorganization under this title more orderly, or would aid in the nonbankruptcy resolution of any of the non-bank financial institution's components under its nonbankruptcy insolvency regime. Additionally, the consultation shall consider whether, if a petition is filed under section 301 or 303, the debtor should file a motion for an exemption authorized by section 1407.

''(d) The court may allow the consultation process to continue for 30 days after the petition, upon motion by the debtor or a creditor. Any post-petition consultation proceedings authorized should be facilitated by the court's mediation services, under seal, and exclude ex parte communications.

''(e) The Market Stability and Capital Adequacy Board and the functional regulator shall publish and transmit to Congress a report documenting the course of any consultation. Such report shall be published and transmitted to Congress within 30 days of the conclusion of the consultation.

''(f) Nothing in this section shall be interpreted to set aside any of the limitations on the use of Federal funds set forth in the No More Bailouts Act of 2009 or the amendments made by such Act.

**''§ 1404. Appointment of trustee**

''In applying section 1104 to a case under this chapter, if the court orders the appointment of a trustee or an examiner, if the trustee or an examiner dies or resigns during the case or is removed under section 324, or if a trustee fails to qualify under section 322, the functional regulator, in consultation with the Market Stability and Capital Adequacy Board, shall submit a list of five disinterested persons that are qualified and willing to serve as trustees in the case and the United States trustee shall appoint, subject to the court's approval, one of such persons to serve as trustee in the case.

**''§ 1405. Right to be heard**

''(a) The functional regulator, the Market Stability and Capital Adequacy Board, the Federal Reserve, the Department of the Treasury, the Securities and Exchange Commission, and any domestic or foreign agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor may raise and may appear and be heard on any issue in a case under this chapter, but may not appeal from any judgment, order, or decree entered in the case.

''(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee may raise, and may appear and be heard on, any issue in a case under this chapter.

**''§ 1406. Right to communicate**

''The court is entitled to communicate directly with, or to request information or assistance directly from, the functional regulator, the Market Stability and Capital Adequacy Board, the Board of Governors of the Federal Reserve System, the Department of the Treasury, or any agency charged with administering a nonbankruptcy insolvency regime for any component of the debtor, subject to the rights of a party in interest to notice and participation.

**''§ 1407. Exemption with respect to certain contracts or agreements**

''(a) Subject to subsection (b)—

''(1) upon motion of the debtor, consented to by the Market Stability and Capital Adequacy Board—

''(A) the debtor and the estate shall be exempt from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561;

''(B) if the Market Stability and Capital Adequacy Board consents to the filing of such motion by the debtor, the Board shall inform the court of its reasons for consenting; and

''(C) the debtor may limit its motion, or the board may limit its consent, to exempt the debtor and the estate from the operation of section 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, or 561, or any combination thereof; and

''(2) if the Market Stability and Capital Adequacy Board does not consent to the filing of a motion by the debtor under paragraph (1), the debtor may file a motion to exempt the debtor and the estate from the operation of sections 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559, 560, and 561, or any combination thereof.

''(b) The court shall commence a hearing on a motion under subsection (a) not later than 5 days after the filing of the motion to determine whether to maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1) or, in the case of a motion under subsection (a)(2), grant the exemption. The court shall request the filing or briefs by the functional regulator and the Market Stability and Capital Adequacy Board. The court shall decide the motion not later than 5 days after commencing such hearing unless—

''(1) the parties in interest consent to a extension for a specific period of time; or

''(2) except with respect to an exemption from the operation of section 559, the court sua sponte extends for 5 additional days the period for decision if such extension would be in the interests of justice or is required by compelling circumstances.

''(c) The court shall maintain, terminate, annul, modify, or condition the exemption under subsection (a)(1), or, in the case of a motion under subsection (a)(2), grant the exemption only upon showing of good cause. In determining whether good cause has been shown, the court shall balance the interests of both debtor and creditors while attempting to preserve the debtor's assets for repayment and reorganization of the debtors obligations, or to provide for a more orderly liquidation.

''(d) For purposes of timing under section 562 of this title, if a motion is filed under subsection (a)(1) or if a motion is granted under subsection (a)(2), the date or dates of liquidation, termination, or acceleration shall be measured from the earlier of—

''(1) the actual date or dates of liquidation, termination, or acceleration; or

''(2) the date on which a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant files a notice with the court that it would have liquidated, terminated, or accelerated a contract or agreement covered by section 562 of this title had a stay under this section not been in place.

**''§ 1408. Conversion or dismissal**

''In applying section 1112 to a case under this chapter, the debtor may convert a case under this chapter to a case under chapter 7 of this title if the debtor may be a debtor under such chapter unless the debtor is not a debtor in possession.'', and

(2) by amending the table of chapters of such title by adding at the end the following:

''14. Adjustment to the Debts of a Non-Bank Financial Institution .. 1401''.

**SEC. 1004. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this title.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply only with respect to cases commenced under

title 11 of the United States Code on or after the date of the enactment of this title.

**SEC. 1005. REFORMS OF SECTION 13 EMERGENCY POWERS.**

(a) RESTRICTIONS ON EMERGENCY POWERS.—The third undesignated paragraph of section 13 of the Federal Reserve Act is amended—

(1) by striking ''In unusual and exigent'' and inserting the following:

''(3) EMERGENCY AUTHORITY.—

''(A) IN GENERAL.—In unusual and exigent''; and

(2) by adding at the end the following new subparagraph:

''(B) REQUIREMENT FOR BROAD AVAILABILITY OF DISCOUNTS.—Subject to the limitations provided under subparagraph (A), any authorization made pursuant to the authority provided under subparagraph (A) shall require discounts to be made broadly available to individuals, partnerships, and corporations within the market sector for which such authorization is being made.

''(C) TRANSPARENCY AND OVERSIGHT.—

''(i) SECRETARY OF THE TREASURY APPROVAL REQUIRED; NOTICE TO THE CONGRESS.—No authorization may be made pursuant to the authority provided under subparagraph (A) unless—

''(I) such authorization is first approved by the Secretary of the Treasury; and

''(II) the Secretary of the Treasury issues a notice to the Congress detailing what authorization the Secretary has approved.

''(ii) PROGRAMS MOVED ON-BUDGET AFTER 90 DAYS.—On and after the date that is 90 days after the date on which any authorization is made pursuant to the authority provided under subparagraph (A), all receipts and disbursements resulting from such authorization shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

''(I) the budget of the United States Government as submitted by the President;

''(II) the congressional budget; and

''(III) the Balanced Budget and Emergency Deficit Control Act of 1985.

''(D) JOINT RESOLUTION OF DISAPPROVAL.—

''(i) IN GENERAL.—With respect to an authorization made pursuant to the authority provided under subparagraph (A), if, during the 90-day period beginning on the date the Congress receives a notice described under subparagraph (C)(i)(II) with respect to such authorization, there is enacted into law a joint resolution disapproving such authorization, any action taken under such authorization must be discontinued and unwound not later than the end of the 180-day period beginning on the date that such authorization was made.

''(ii) CONTENTS OF JOINT RESOLUTION.—For the purpose of this paragraph, the term 'joint resolution' means only a joint resolution—

''(I) that is introduced not later than 3 calendar days after the date on which the notice referred to in clause (i) is received by the Congress;

''(II) which does not have a preamble;

''(III) the title of which is as follows: 'Joint resolution relating to the disapproval of authorization under the emergency powers of the Federal Reserve Act'; and

''(IV) the matter after the resolving clause of which is as follows: 'That Congress disapproves the authorization contained in the notice submitted to the Congress by the Secretary of the Treasury on the date of _____ relating to _____.' (The blank spaces being appropriately filled in.).

''(E) FAST TRACK CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

''(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this section, the House shall convene not later than the second calendar day after receipt of such report.

''(ii) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the notice referred to in subparagraph (D)(i). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

''(iii) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the notice referred to in subparagraph (D)(i), to move to proceed to consider the joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

''(iv) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except two hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

''(F) FAST TRACK CONSIDERATION IN SENATE.—

''(i) RECONVENING.—Upon receipt of a notice referred to in subparagraph (D)(i), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

''(ii) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(iii) FLOOR CONSIDERATION.—

''(I) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) and ending on the 6th day after the date on which Congress receives a notice referred to in subparagraph (D)(i) (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

''(II) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

''(III) VOTE ON PASSAGE.—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

''(IV) RULINGS OF THE CHAIR ON PROCEDURE.—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

''(G) RULES RELATING TO SENATE AND HOUSE OF REPRESENTATIVES.—

''(i) COORDINATION WITH ACTION BY OTHER HOUSE.—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

''(I) The joint resolution of the other House shall not be referred to a committee.

''(II) With respect to a joint resolution of the House receiving the resolution—

''(aa) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

''(bb) the vote on passage shall be on the joint resolution of the other House.

''(ii) TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.—If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

''(iii) TREATMENT OF COMPANION MEASURES.—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

''(iv) VETOES.—If the President vetoes the joint resolution, debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

''(v) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This subparagraph and subparagraphs (D), (E), and (F) are enacted by Congress—

''(I) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

''(II) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.''.

(b) CURRENT PROGRAMS MOVED ON-BUDGET.—Not later than 90 days after the date of the enactment of this title, all receipts and disbursements resulting from any authorization made before the date of the enactment of this title pursuant to the authority granted by the third undesignated paragraph of section 13 of the Federal Reserve Act shall be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of—

(1) the budget of the United States Government as submitted by the President;

(2) the congressional budget; and

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. 1006. ESTABLISHMENT OF MARKET STABILITY AND CAPITAL ADEQUACY BOARD.**

(a) IN GENERAL.—There is hereby established the Market Stability and Capital Adequacy Board (hereafter in this title referred to as the ''Board'') as an independent establishment in the Executive Branch.

(b) CONSTITUTION OF BOARD.—Subject to paragraph (4), the Board shall have 12 members as follows:

(1) PUBLIC MEMBERS.—The following shall be members of the Board—

(A) The Secretary of the Treasury.

(B) The Chairman of the Board of Governors of the Federal Reserve System.

(C) The Chairman of the Securities and Exchange Commission.

(D) The Chairperson of the Federal Deposit Insurance Corporation.

(E) The Chairman of the Commodity Futures Trading Commission.

(F) The Comptroller of the Currency.

(G) The Director of the Office of Thrift Supervision.

(2) PRIVATE MEMBERS.—The Board shall also have 5 members appointed by the President, by and with the advice and consent of the Senate, who shall be appointed from among individuals who—

(A) are specially qualified to serve on the Board by virtue of their education, training, and experience; and

(B) are not officers or employees of the Federal Government, including the Board of Governors of the Federal Reserve System.

(3) CHAIRPERSON.—The Secretary of the Treasury shall serve as the Chairperson of the Board.

(4) DIRECTOR OF FHFA AS INTERIM MEMBER.—Until such time as the charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation are both repealed pursuant to section 7006(d), the Board shall consist of 13 members with the Director of the Federal Housing Finance Agency serving as a public member under paragraph (1).

(c) APPOINTMENTS.—

(1) TERM.—

(A) IN GENERAL.—Each appointed member shall be appointed for a term of 5 years.

(B) STAGGERED TERMS.—Of the members of the Board first appointed under subsection (b)(2), as designated by the President at the time of appointment—

(i) 1 shall be appointed for a term of 5 years;

(ii) 1 shall be appointed for a term of 4 years;

(iii) 1 shall be appointed for a term of 3 years;

(iv) 1 shall be appointed for a term of 2 years; and

(v) 1 shall be appointed for a term of 1 year.

(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) CONTINUATION OF SERVICE.—Each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(4) REAPPOINTMENT TO A 2ND TERM.—Each member appointed to a term on the Board under subsection (b)(2), including an interim appointment under paragraph (2), may be reappointed by the President to serve 1 additional term.

(d) VACANCY.—

(1) IN GENERAL.—Any vacancy on the Board shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in any position listed in subsection (b)(1) and pending the appointment of a successor, or during the absence or disability of the individual serving in such position, any acting official in such position shall be a member of the Board while such vacancy, absence or disability continues and the acting official continues acting in such position.

(e) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—No member of the Board may hold any office, position, or employment in any financial institution or affiliate of a financial institution during—

(A) the time such member is in office; and

(B) the 2-year period beginning on the date such member ceases to serve on the Board.

(2) CERTIFICATION.—Upon taking office, each member of the Board shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board.

(f) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 3 members of the Board appointed under subsection (b)(2) shall be from the same political party.

(2) QUALIFICATIONS GENERALLY.—It is the sense of the Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience commensurate with the duties of the Board.

(3) SPECIFIC APPOINTMENT QUALIFICATIONS FOR CERTAIN APPOINTED MEMBERS.—

(A) STATE BANK.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have had experience as a State bank supervisor or senior management executive with a State depository institution.

(B) INSURANCE COMMISSIONER.—Of the members appointed to the Board under subsection (b)(2), at least 1 shall be appointed from among individuals who have served as a State insurance commissioner or supervisor.

(4) INITIAL MEETING.—The Board shall meet and begin the operations of the Board as soon as practicable but not later than the end of the 180-day period beginning the date of the enactment of this title.

(g) QUORUM.—Four of the members of the Board designated under subsection (b)(1) and 3 members of the Board appointed under (b)(2) shall constitute a quorum.

(h) QUARTERLY MEETINGS.—The Board shall meet upon the call of the chairperson or a majority of the members at least once in each calendar quarter

**SEC. 1007. FUNCTIONS OF BOARD.**

(a) PRINCIPAL FUNCTIONS.—The principal functions of the Board shall be to—

(1) monitor the interactions of various sectors of the financial system; and

(2) identify risks that could endanger the stability and soundness of the system.

(b) SPECIFIC REVIEW FUNCTIONS INCLUDED.—In carrying out the functions described in subsection (a), the Board shall—

(1) review financial industry data collected from the appropriate functional regulators;

(2) review insurance industry data, in coordination with State insurance supervisors, for all lines of insurance other than health insurance;

(3) monitor government policies and initiatives;

(4) review risk management practices within financial regulatory agencies;

(5) review capital standards set by the appropriate functional regulators and make recommendations to ensure capital and leverage ratios match risks regulated entities are taking on;

(6) review transparency and regulatory understanding of risk exposures in the over-the-counter derivatives markets and make recommendations regarding the appropriate clearing of trades in those markets through central counterparties;

(7) make recommendations regarding any government or industry policies and practices that are exacerbating systemic risk; and

(8) take such other actions and make such other recommendations as the Board, in the discretion of the Board, determines to be appropriate.

(c) REPORTS TO FEDERAL FUNCTIONAL REGULATORS AND THE CONGRESS.—The Board shall periodically make a report to the Congress and the functional regulators on the findings, conclusions, and recommendations of the Board in a manner and within a time frame that allows the Congress and such regulators to act to contain risks posed by specific firms, industry practices, activities and interactions of entities under different regulatory regimes, or government policies.

(d) TESTIMONY TO CONGRESS.—Not later than February 20 and July 20 of each year, the Chairperson of the Board shall testify to the Congress at semiannual hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, about the state of systemic risk in the financial services industry and proposals or recommendations by the Board to address any undue risk.

(e) RULE OF CONSTRUCTION.—No provision of this title shall be construed as giving the Board any enforcement authority over any financial institution.

**SEC. 1008. POWERS OF BOARD.**

(a) CONTRACTING.—The Board may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Board to discharge its duties under this title.

(b) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Board may secure directly from any executive department, agency, or independent establishment, or any other instrumentality of the United States information and recommendations for the purposes of this title.

(2) DELIVERY OF REQUESTED INFORMATION.—Each executive department, agency, or independent establishment, or any other instrumentality of the United States shall, to the extent authorized by law, furnish any information and recommendations requested under paragraph (1) directly to the Board, upon request made by the chairperson or any member designated by a majority of the Commission.

(3) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Board and its staff consistent with all applicable statutes, regulations, and Executive orders.

(c) ASSISTANCE FROM FEDERAL AGENCIES.—

(1) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Board on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law, including agencies represented on the Board under section 1006(b)(1).

**SEC. 1009. RESPONSIBILITIES OF FEDERAL FUNCTIONAL REGULATORS.**

(a) FEDERAL FUNCTIONAL REGULATOR DEFINED.—For purposes of this title, the term

''Federal functional regulator'' has the same meaning as in section 509(2) of the Gramm-Leach-Bliley Act, except that such term includes the Commodity Futures Trading Commission.

(b) ASSESSMENTS AND REVIEWS.—In order to address current regulatory gaps, each Federal functional regulator shall, before each quarterly meeting of the Board—

(1) assess the effects on macroeconomic stability of the activities of financial institutions that are subject to the jurisdiction of such agency;

(2) review how such financial institutions interact with entities outside the jurisdiction of such agency; and

(3) report the results of such assessment and review to the Board, together with such recommendations for administrative action as the agency determines to be appropriate.

**SEC. 1010. STAFF OF BOARD.**

(a) APPOINTMENT AND COMPENSATION.—The chairperson, in accordance with rules agreed upon by the Board and title 5, United States Code, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Board to carry out its functions.

(b) DETAILEES.—Any Federal Government employee may be detailed to the Board and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) CONSULTANT SERVICES.—The Board may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

**SEC. 1011. COMPENSATION AND TRAVEL EXPENSES.**

(a) COMPENSATION.—Each member of the Board appointed under section 1006(b)(2) may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(b) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall 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.

## TITLE II—FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL

**SEC. 2001. SHORT TITLE.**

This title may be cited as the ''Financial Institutions Consumer Protection and Examination Council Act of 2009''.

**SEC. 2002. DEFINITIONS.**

(a) RENAMING COUNCIL.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by striking ''Financial Institutions Examination Council'' each place it appears, except for in section 1001 of such Act, and inserting ''Financial Institutions Consumer Protection and Examination Council''.

(b) DEFINITIONS RELATING TO CONSUMER PROTECTION.—Section 1003 of such Act (12 U.S.C. 3302) is amended—

(1) in paragraph (2), by striking ''and''; and

(2) by adding at the end the following new paragraphs:

''(4) the term 'enumerated consumer laws' means—

''(A) the Alternative Mortgage Transaction Parity Act (12 U.S.C. 3801 et seq.);

''(B) the Community Reinvestment Act;

''(C) the Consumer Leasing Act;

''(D) the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.);

''(E) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

''(F) the Fair Credit Billing Act;

''(G) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

''(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

''(I) subsections (c), (d), (e), and (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t);

''(J) sections 502, 503, 504, 505, 506, 507, 508, and 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802 et seq.);

''(K) the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.);

''(L) the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.);

''(M) the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.);

''(N) the Truth in Lending Act (15 U.S.C. 1601 et seq.);

''(O) the Truth in Savings Act (12 U.S.C. 4301 et seq.); and

''(5) the term 'expanded Board' means——

''(A) the members of the Council described under section 1004(a);

''(B) the Secretary of Housing and Urban Development;

''(C) the Chairman of the Securities and Exchange Commission;

''(D) the Chairman of the Commodities Futures Trading Commission;

''(E) the Chairman of the Federal Trade Commission;

''(F) the Director of the Federal Housing Finance Agency;

''(G) the Director of the Pension Benefit Guarantee Corporation;

''(H) the Secretary of the Treasury;

''(I) the Secretary of Defense; and

''(J) the Secretary of Veterans' Affairs.''.

(c) DEFINITIONS RELATED TO THE STATE LIAISON COMMITTEE.—Section 1007 of such Act (12 U.S.C. 3306) is amended by inserting after ''financial institutions'' the following: ''and one representative of the National Association of Insurance Commissioners''.

**SEC. 2003. FINANCIAL INSTITUTIONS CONSUMER PROTECTION AND EXAMINATION COUNCIL.**

(a) CONSUMER PROTECTION DUTIES.—Section 1006 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305) is amended by adding at the end the following new subsection:

''(h) CONSUMER PROTECTION REGULATIONS.—

''(1) IN GENERAL.—The Council shall study the need for revised or new regulations for the protection of consumers under the enumerated consumer laws and shall vote on suggested model regulations that the Council determines necessary for the protection of consumers under the enumerated consumer laws.

''(2) REGULATIONS ISSUED BY COUNCIL MEMBERS.—Not later than the end of the 1-month period beginning on the date a suggested model regulation is agreed to by the Council by a majority vote of the members of the Council, the members of the Council, other than the Chairman of the State Liaison Committee, shall jointly issue regulations based on such suggested model regulation, where applicable.

''(3) EXPANDED BOARD REQUIRED.—For purposes of any action taken pursuant to this subsection and any reference to the members of the Council under this subsection, the Council shall consist of the expanded Board.

''(4) NO COUNCIL ENFORCEMENT POWER.—No provision of this subsection shall be construed as conferring any enforcement authority to the Council.

''(5) REQUIREMENTS FOR REGULATIONS PROPOSED BY THE CHAIRMAN OF THE STATE LIAISON COMMITTEE.—

''(A) IN GENERAL.—The Chairman of the State Liaison Committee may not propose any suggested model regulation for the Council to vote on under this subsection unless such proposed suggested model regulation is accompanied by a certification from the Chairman of the State Liaison Committee stating that more than half of the States support such proposal.

''(B) METHOD OF DETERMINATION.—For purposes of this paragraph, the Chairman of the State Liaison Committee shall determine the method for determining if a State supports a proposal.''.

(b) ADDITIONAL STAFF.—Section 1008 of such Act (12 U.S.C. 3307) is amended by adding at the end the following new subsection:

''(d) CONSUMER PROTECTION STAFF.—

''(1) IN GENERAL.—At the request of the Council, any member of the expanded Board, other than the Chairman of the State Liaison Committee, may detail, on a reimbursable basis, any of the personnel of that member's department or agency to the Council to assist it in carrying out the Council's duties under subsection (h).

''(2) EXPANDED BOARD REQUIRED.—When making any request under this subsection, the Council shall consist of the expanded Board.''.

**SEC. 2004. OFFICE OF CONSUMER PROTECTION.**

The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following new section:

**''SEC. 1012. OFFICE OF CONSUMER PROTECTION.**

''(a) OFFICE OF CONSUMER PROTECTION.—There is hereby established within the Council an Office of Consumer Protection (hereinafter in this section referred to as the 'Office').

''(b) CONSUMER COMPLAINT HOTLINE AND WEBSITE.—The Office shall establish a toll-free hotline and a website for consumers to contact regarding inquiries or complaints related to consumer protection. Such hotline and website shall then refer such inquiries or complaints to the appropriate Council member, which will then respond to the inquiry or complaint.

''(c) DISCLOSURE REVIEW.—Not less often than once every 7 years, the Office shall undertake a comprehensive review of the rules and regulations regarding disclosures made by entities under the jurisdiction of the members of the Council to consumers. In making such review the Office shall perform a cost and benefit analysis of each such disclosure and determine if the policy of the members of the Council towards such disclosure should remain the same or be revised.

''(d) CONSUMER TESTING REQUIREMENT.—Before prescribing any regulation pursuant to section 1006(h), the Council shall have the Office carry out consumer testing with respect to such proposed model regulation.

''(e) PERIODIC REVIEW OF REGULATIONS.—

''(1) REVIEW.—Not less than once every 7 years, the Office shall undertake a comprehensive review of all regulations issued by the members of the Council pursuant to section 1006(h)(2). In making such review, the Office shall perform a cost and benefit analysis of each regulation and determine if such regulation should remain the same or if such regulation should be revised.

''(2) REPORT.—After performing a review required by paragraph (1), the Office shall issue a report to the Congress describing the review process, any determinations made by the Office, and any revisions to regulations that the Office determined were needed.''.

**SEC. 2005. STATE ENFORCEMENT AUTHORITY.**

(a) ENFORCEMENT OF COUNCIL REGULATIONS.—The Federal Financial Institutions

Examination Council Act of 1978 (12 U.S.C. 3301 et seq.), as amended by section 2004, is further amended by adding at the end the following new section:

**"SEC. 1013. STATE ENFORCEMENT AUTHORITY.**

''The chief law enforcement officer of a State, or an official or agency designated by a State, shall have the authority to enforce any regulations issued by the members of the Council pursuant to section 1006(h)(2) against entities regulated by such State.''.

(b) ENFORCEMENT OF STATE CONSUMER PROTECTION LAWS AGAINST NATIONAL BANKS AND THRIFTS.—Notwithstanding any other provision of law, other than section 5240 of the Revised Statutes and the comparable limitation on visitorial authority applicable to federal savings associations, the chief law enforcement officer of a State, or an official or agency designated by a State, shall have the right to enforce such State's non-preempted consumer protection laws against national banks.

**SEC. 2006. UNFAIR OR DECEPTIVE ACTS OR PRACTICES AUTHORITY TRANSFERRED.**

Section 18(f)(1) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(1) by striking ''(with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))'' and inserting the following: ''(with respect to entities described in paragraph (2)(B)), the Comptroller of the Currency (with respect to entities described in paragraph (2)(A)), the Board of Directors of the Federal Deposit Insurance Corporation (with respect to entities described under paragraph (2)(C)), the Director of the Office of Thrift Supervision (with respect to savings associations or any savings and loan institutions described in paragraph (3)),'';

(2) by striking ''each such Board'' and inserting ''each such entity''; and

(3) by striking ''any such Board'' and inserting ''any such entity''.

**SEC. 2007. EQUALITY OF CONSUMER PROTECTION FUNCTIONS; CONSUMER PROTECTION DIVISIONS.**

(a) EQUALITY OF CONSUMER PROTECTION FUNCTIONS.—With respect to each regulatory agency, the functions of such agency related to consumer protection shall be of equal importance to such agency as the other functions of such agency.

(b) CONSUMER PROTECTION DIVISIONS.—

(1) IN GENERAL.—There is hereby established within each regulatory agency a consumer protection division.

(2) REPORT.—The head of each consumer protection division established under paragraph (1) shall submit an annual report to the Congress detailing the performance of the regulatory agency in which such division is located in enforcing the consumer protection laws.

(c) REGULATORY AGENCY DEFINED.—For purposes of this section, the term ''regulatory agency'' means the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, the Federal Trade Commission, and the Department of Housing and Urban Development.

**SEC. 2008. PROHIBITION ON CHARTER CONVERSIONS WHILE UNDER REGULATORY SANCTION.**

With respect to an entity for which there is an appropriate Federal banking agency, as such term is defined under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), such agency shall issue regulations prohibiting such an entity from converting the type of such entity's charter during any time in which such entity is under a regulatory sanction by such agency.

**TITLE III—ANTI-FRAUD PROVISIONS**

**SEC. 3001. 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 new subsection:

''(g) AUTHORITY TO IMPOSE MONEY PENALTIES.—

''(1) GROUNDS FOR IMPOSING.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if it finds, on the record after notice and opportunity for hearing, that—

''(A) such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be $6,500 for a natural person or $65,000 for any other person.

''(B) SECOND TIER.—Notwithstanding paragraph (A), the maximum amount of penalty for each such act or omission shall be $65,000 for a natural person or $325,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

''(C) THIRD TIER.—Notwithstanding paragraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $130,000 for a natural person or $650,000 for any other person if—

''(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

''(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in 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 respondent's ability 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 such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.''.

(b) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Subsection (a) of section 21B of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(1) by striking ''(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—In any proceeding'' and inserting the following:

''(a) COMMISSION AUTHORITY TO ASSESS MONEY PENALTIES.—

''(1) IN GENERAL.—In any proceeding'';

(2) by redesignating paragraphs (1) through (4) of such subsection as subparagraphs (A) through (D), respectively and moving such redesignated subparagraphs and the matter following such subparagraphs 2 ems to the right; and

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

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to section 21C of this title against any person, the Commission may impose a civil penalty if it 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 thereunder; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

(c) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Paragraph (1) of section 9(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(1) by striking ''(1) AUTHORITY OF COMMISSION.—In any proceeding'' and inserting the following:

''(1) AUTHORITY OF COMMISSION.—

''(A) IN GENERAL.—In any proceeding'';

(2) by redesignating subparagraphs (A) through (C) of such paragraph as clauses (i) through (iii), respectively and by moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

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

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if it 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 thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

(d) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Paragraph (1) of section 203(i) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(1) by striking ''(1) AUTHORITY OF COMMISSION.—In any proceeding'' and inserting the following:

''(1) AUTHORITY OF COMMISSION.—

''(A) IN GENERAL.—In any proceeding'';

(2) by redesignating subparagraphs (A) through (D) of such paragraph as clauses (i) through (iv), respectively and moving such redesignated clauses and the matter following such subparagraphs 2 ems to the right; and

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

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (k) against any person, the Commission may impose a civil penalty if it 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 thereunder; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder.''.

**SEC. 3002. FORMERLY ASSOCIATED PERSONS.**

(a) MEMBER OR EMPLOYEE OF THE MUNICIPAL SECURITIES RULEMAKING BOARD.—Section 15B(c)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(8)) is amended by striking ''any member or employee'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member or employee''.

(b) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5) is amended—

(1) in subsection (c)(1)(C), by striking ''or seeking to become associated,'' and inserting ''seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'';

(2) in subsection (c)(2)(A), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or

seeking to become associated'' after ''any person associated''; and

(3) in subsection (c)(2)(B), by inserting '', seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated'' after ''any person associated''.

(c) PERSON ASSOCIATED WITH A MEMBER OF A NATIONAL SECURITIES EXCHANGE OR REGISTERED SECURITIES ASSOCIATION.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting '', or, as to any act or practice, or omission to act, while associated with a member, formerly associated'' after ''member or a person associated''.

(d) PARTICIPANT OF A REGISTERED CLEARING AGENCY.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by inserting ''or, as to any act or practice, or omission to act, while a participant, was a participant,'' after ''in which such person is a participant,''.

(e) OFFICER OR DIRECTOR OF A SELF-REGULATORY ORGANIZATION.—Section 19(h)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(h)(4)) is amended—

(1) by striking ''any officer or director'' and inserting ''any person who is, or at the time of the alleged misconduct was, an officer or director''; and

(2) by striking ''such officer or director'' and inserting ''such person''.

(f) OFFICER OR DIRECTOR OF AN INVESTMENT COMPANY.—Section 36(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–35(a)) is amended—

(1) by striking ''a person serving or acting'' and inserting ''a person who is, or at the time of the alleged misconduct was, serving or acting''; and

(2) by striking ''such person so serves or acts'' and inserting ''such person so serves or acts, or at the time of the alleged misconduct, so served or acted''.

(g) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(1) SARBANES-OXLEY ACT OF 2002 AMENDMENT.—Section 2(a)(9) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201(9)) is amended by adding at the end the following new subparagraph:

''(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of the provisions of sections 3(c), 101(c), 105, and 107(c) and Board or Commission rules thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except—

''(i) the authority to conduct an investigation of such person under section 105(b) shall apply only with respect to any act or practice, or omission to act, while such person was associated or seeking to become associated with a registered public accounting firm; and

''(ii) the authority to commence a proceeding under section 105(c)(1), or impose disciplinary sanctions under section 105(c)(4), against such person shall apply only on—

''(I) the basis of conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

''(II) non-cooperation as described in section 105(b)(3) with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.''.

(2) SECURITIES EXCHANGE ACT OF 1934 AMENDMENT.—Section 21(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(a)(1)) is amended by striking ''or a person associated with such a firm'' and inserting '', a person associated with such a firm, or, as to any act, practice, or omission to act while associated with such firm, a person formerly associated with such a firm''.

(h) SUPERVISORY PERSONNEL OF AN AUDIT FIRM.—Section 105(c)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(c)(6)) is amended—

(1) in subparagraph (A), by striking ''the supervisory personnel'' and inserting ''any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person''; and

(2) in subparagraph (B)—

(A) by striking ''No associated person'' and inserting ''No current or former supervisory person''; and

(B) by striking ''any other person'' and inserting ''any associated person''.

(i) MEMBER OF THE PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD.—Section 107(d)(3) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7217(d)(3)) is amended by striking ''any member'' and inserting ''any person who is, or at the time of the alleged misconduct was, a member''.

**SEC. 3003. COLLATERAL BARS.**

(a) SECTION 15(b)(6)(A) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15(b)(6)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(6)(A)) is amended by striking ''12 months, or bar such person from being associated with a broker or dealer,'' and inserting ''12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,''.

(b) SECTION 15B(c)(4) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 15B(c)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(c)(4)) is amended by striking ''twelve months or bar any such person from being associated with a municipal securities dealer,'' and inserting ''twelve months or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, or transfer agent,''.

(c) SECTION 17A(c)(4)(C) OF THE SECURITIES EXCHANGE ACT OF 1934.—Section 17A(c)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(c)(4)(C)) is amended by striking ''twelve months or bar any such person from being associated with the transfer agent,'' and inserting ''twelve months or bar any such person from being associated with any transfer agent, broker, dealer, investment adviser, or municipal securities dealer,''.

(d) SECTION 203(f) OF THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(f)) is amended by striking ''twelve months or bar any such person from being associated with an investment adviser,'' and inserting ''twelve months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, or transfer agent,''.

**SEC. 3004. UNLAWFUL MARGIN LENDING.**

Section 7(c)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78g(c)(1)(A)) is amended by striking ''; and'' and inserting ''; or''.

**SEC. 3005. NATIONWIDE SERVICE OF PROCESS.**

(a) SECURITIES ACT OF 1933.—Section 22(a) of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by inserting after the second sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(b) SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended by inserting after the third sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a–43) is amended by inserting after the fourth sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

(d) INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended by inserting after the third sentence the following: ''In any civil action instituted by the Commission under this title in a United States district court for any judicial district, subpoenas issued to compel the attendance of witnesses or the production of documents or tangible things (or both) at any hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure does not apply to a subpoena so issued.''.

**SEC. 3006. REAUTHORIZATION OF THE FINANCIAL CRIMES ENFORCEMENT NETWORK.**

(a) FINDINGS.—

(1) The Congress finds as follows:

(A) The work of the Financial Crimes Enforcement Network (hereinafter in this section referred to as ''FinCEN'') is essential to safeguard the United States financial system and its international affiliates from the abuses of financial crime, including terrorist financing, weapons of mass destruction proliferation, and money laundering.

(B) All avenues of financial intermediation are vulnerable to abuse by illicit actors, and FinCEN exercises the authorities of the Bank Secrecy Act over a broad range of financial institutions.

(2) The Congress further finds and recognizes the recent establishment by FinCEN of an International Programs Division to expand and enhance global financial intelligence sharing initiatives aimed at combating transnational crime threats facing United States financial markets, and takes note of FinCEN's efforts to collaborate with foreign financial intelligence unit partners on analytical projects to identify and address emerging threats and vulnerabilities.

(3) The Congress further finds and recognizes the role of FinCEN in discovering and investigating widespread fraud in the mortgage market and elsewhere in the financial services industry. Alongside an effective licensing and registration system for all mortgage originators, a vigilant FinCEN is critical to the recovery of our housing markets and consumer confidence in both the home buying process and the financial services industry as a whole.

(b) REAUTHORIZATION.—Section 310(d)(1) of title 31, United States Code, is amended by striking ''such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005'' and inserting ''not more than $105,500,000 for fiscal year 2010, and such sums as may be necessary for fiscal years 2011, 2012, 2013, and 2014''.

(c) ADDITIONAL FINANCIAL FRAUD AUTHORIZATION OF APPROPRIATIONS.—In addition to such other amounts otherwise made available or appropriated to FinCEN, there are authorized to be appropriated to FinCEN $15,000,000 to be used specifically for efforts to detect financial fraud. Such sums are authorized to remain available until expended.

**SEC. 3007. FAIR FUND IMPROVEMENTS.**

(a) AMENDMENT.—Subsection (a) of section 308 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7246(a)) is amended to read as follows:

''(a) CIVIL PENALTIES TO BE USED FOR THE RELIEF OF VICTIMS.—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), the Commission obtains a civil penalty against any person for a violation of such laws, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.''.

(b) CONFORMING AMENDMENTS.—Section 308 of such Act is amended—

(1) in subsection (b)—

(A) by striking ''for a disgorgement fund described in subsection (a)'' and inserting ''for a disgorgement fund or other fund described in subsection (a)''; and

(B) by striking ''in the disgorgement fund'' and inserting ''in such fund''; and

(2) by striking subsection (e).

## TITLE IV—OVER-THE-COUNTER DERIVATIVES MARKETS

**SECTION 4001. SHORT TITLE.**

This title may be cited as the ''Over-the-Counter Derivatives Markets Act of 2009''.

### Subtitle A—Amendments to the Commodity Exchange Act

**SEC. 4100. DEFINITIONS.**

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended by adding at the end the following:

''(35) SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(ii) provides for any purchase, sale, payment, or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(iii) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any agreement, contract, or transaction commonly known as an interest rate swap, a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, total return swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, energy swap, metal swap, agricultural swap, emissions swap, or commodity swap;

''(iv) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(v) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of clauses (i) through (iv).

''(B) EXCLUSIONS.—The term 'swap' does not include:

''(i) any contract of sale of a commodity for future delivery or security futures product traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any sale of a nonfinancial commodity for deferred shipment or delivery, so long as such transaction is physically settled;

''(iii) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(iv) any put, call, straddle, option, or privilege relating to foreign currency entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a));

''(v) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

''(vi) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis that is subject to the Securities Act of 1933 (15 U.S.C. 77a et seq.) and the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(vii) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1));

''(viii) any agreement, contract, or transaction that is—

''(I) based on a security; and

''(II) entered into directly or through an underwriter (as defined in section 2(a)(11) of the Securities Act of 1933) (15 U.S.C. 77b(a)(11)) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising;

''(ix) any foreign exchange swap;

''(x) any foreign exchange forward;

''(xi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank or the United States Government, or an agency of the United States Government that is expressly backed by the full faith and credit of the United States; and

''(xii) any security-based swap, other than a security-based swap as described in paragraph (36](C).

''(C) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a swap only with respect to each agreement, contract, or transaction under the master agreement that is a swap pursuant to subparagraph (A).

''(36) SECURITY-BASED SWAP.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'security-based swap' means any agreement, contract, or transaction that would be a swap under paragraph (35) (without regard to paragraph (35)(B)(xii)), and that—

''(i) is based on an index that is a narrow-based security index, including any interest therein or based on the value thereof;

''(ii) is based on a single security or loan, including any interest therein or based on the value thereof; or

''(iii) is based on the occurrence, non-occurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event must directly affect the financial statements, financial condition, or financial obligations of the issuer.

''(B) EXCLUSION.—The term 'security-based swap' does not include any agreement, contract, or transaction that meets the definition of security-based swap only because it references or is based upon a government security.

''(C) MIXED SWAP.—The term 'security-based swap' includes any agreement, contract, or transaction that is as described in subparagraph (A) and also is based on the value of one or more interest or other rates, currencies, commodities, instruments of indebtedness, indices, quantitative measures, other financial or economic interest or property of any kind (other than a single security or a narrow-based security index), or the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence (other than an event described in subparagraph (A)(iii)).

''(D) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—The term 'security-based swap' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a security-based swap pursuant to subparagraph (A), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a security-based swap pursuant to subparagraph (A), except that the master agreement shall be considered to be a security-based swap only with respect to each agreement, contract, or transaction under the master agreement that is a security-based swap pursuant to subparagraph (A).

''(37) SWAP DEALER.—

''(A) IN GENERAL.—The term 'swap dealer' means any person engaged in the business of buying and selling swaps for such person's own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

''(B) EXCEPTION.—The term 'swap dealer' does not include a person that buys or sells swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(38) SECURITY-BASED SWAP DEALER.—

''(A) IN GENERAL.—The term 'security-based swap dealer' means any person engaged in the business of buying and selling security-based swaps for such person's own account, through a broker or otherwise, that is regulated by a Prudential Regulator.

''(B) EXCEPTION.—The term 'security-based swap dealer' does not include a person that buys or sells security-based swaps for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.

''(39) MAJOR SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major swap participant' means any person who is not a swap dealer, who maintains a substantial net position in outstanding swaps, excluding positions held primarily for hedging (including balance sheet hedging) or risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major swap participant for 1 or more individual types of swaps.

''(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.— The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

''(40) MAJOR SECURITY-BASED SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'major security-based swap participant' means any person who is not a security-based swap dealer, who maintains a substantial net position in outstanding security-based swaps, excluding positions held primarily for commercial hedging (including balance sheet hedging) or financial risk management purposes, and who is regulated by a Prudential Regulator. A person may be designated as a major security-based swap participant for 1 or more individual types of security-based swaps.

''(B) DEFINITION OF 'SUBSTANTIAL NET POSITION'.—The Commission and the Securities and Exchange Commission shall jointly define by rule or regulation the term 'substantial net position' at a threshold that the regulators determine prudent for the effective monitoring, management and oversight of the financial system.

''(41) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

''(42) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(43) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' means—

''(A) the Board, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a State-chartered bank that is a member of the Federal Reserve System;

''(ii) a State-chartered branch or agency of a foreign bank; or

''(iii) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

''(B) the Office of the Comptroller of the Currency, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is—

''(i) a national bank; or

''(ii) a federally chartered branch or agency of a foreign bank;

''(C) the Federal Deposit Insurance Corporation, in the case of a swap dealer, major swap participant, security-based swap dealer or major security-based swap participant that is a State-chartered bank that is not a member of the Federal Reserve System; or

''(D) the Office of Thrift Supervision, in the case of a savings association (as defined in section 2 of the Home Owners' Loan Act) or a savings and loan holding company (as defined in section 10 of such Act).

''(44) SWAP REPOSITORY.—The term 'swap repository' means an entity that collects and maintains the records of the terms and conditions of swaps or security-based swaps entered into by third parties.''.

**SEC. 4101. SWAP REPOSITORIES.**

(a) SWAP REPOSITORIES.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 20 the following:

**''SEC. 21. SWAP REPOSITORIES.**

''(a) REQUIRED REPORTING.—

''(1) IN GENERAL.—

''(A) IN GENERAL.—Any swap that is not accepted for clearing by a derivatives clearing organization shall be reported to either a swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the swap, to the Commission in accordance with section 4r within such time period as the Commission may by rule prescribe.

''(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties to a swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

''(2) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(A) Swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than 270 days after the effective date of such Act.

''(B) Swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered swap repository or the Commission no later than the later of—

''(i) 180 days after the effective date of such Act; or

''(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

''(b) SWAP REPOSITORIES.—

''(1) REGISTRATION REQUIREMENT.—

''(A) IN GENERAL.—It shall be unlawful for a swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a swap repository.

''(B) INSPECTION AND EXAMINATION.—Registered swap repositories shall be subject to inspection and examination by any representatives of the Commission.

''(2) STANDARD SETTING.—

''(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each swap repository.

''(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for swap repositories.

''(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations that clear swaps.

''(3) DUTIES.—A swap repository shall—

''(A) accept data prescribed by the Commission for each swap under paragraph (2);

''(B) maintain such data in such form and manner and for such period as may be required by the Commission;

''(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 8(j); and

''(D) make available, on a confidential basis, all data obtained by the swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(4) REQUIRED REGISTRATION FOR SWAP REPOSITORIES.—Any person that is required to be registered as a swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Securities and Exchange Commission as a security-based swap repository.

''(5) HARMONIZATION OF RULES.—Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Securities and Exchange Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as security-based swap repositories under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

''(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a swap repository from the requirements of this section if the Commission finds that such swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Securities and Exchange Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.''.

(b) REPORTING AND RECORDKEEPING.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4q the following:

**''SEC. 4r. REPORTING AND RECORDKEEPING FOR CERTAIN SWAPS.**

''(a) IN GENERAL.—Any person who enters into a swap that is not accepted for clearing by a derivatives clearing organization and is not reported to a swap repository registered pursuant to section 21 shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the swaps held by the person; and

''(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Securities and Exchange Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires repositories to collect.''.

(c) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—Section 8 of such Act (7 U.S.C. 12) is amended by adding at the end the following:

''(j) PUBLIC REPORTING OF AGGREGATE SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to

the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a derivatives clearing organization or a swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) derivatives clearing organizations;

''(B) swap repositories pursuant to section 21(c)(3); and

''(C) reports received by the Commission pursuant to section 4r.''.

**SEC. 4102. MARGIN FOR SWAPS BETWEEN SWAPS DEALERS AND MAJOR SWAP PARTICIPANTS.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 4101(b) of this title) the following:

**''SEC. 4s. MARGIN FOR SWAPS BETWEEN CERTAIN SWAPS DEALERS AND CERTAIN MAJOR SWAP PARTICIPANTS.**

''Each Prudential Regulator shall impose both initial and variation margin requirements on all swaps between swap dealers and major swap participants subject to regulation by the Regulator, that are not cleared by a derivatives clearing organization.''.

**SEC. 4103. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4s (as added by section 4102 of this title) the following:

**''SEC. 4t. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

''(a) CLEARED SWAPS.—A swap dealer, futures commission merchant, or derivatives clearing organization by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a swap to be cleared by or through a derivatives clearing organization shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and relations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

''(b) OVER-THE-COUNTER SWAPS.—At the request of a swap counterparty who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing organization, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. Any such funds and property may, with the agreement of the customer, be commingled with the funds and property of other swap counterparties and customers and shall be eligible for treatment as customer property under this Act. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

''(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.''.

**Subtitle B—Amendments to the Securities Exchange Act of 1934**

**SEC. 4201. DEFINITIONS.**

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

''(65) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

''(66) MAJOR SWAP PARTICIPANT.—The term 'major swap participant' has the same meaning as in section 1a(40) of the Commodity Exchange Act (7 U.S.C. 1a(40)).

''(67) MAJOR SECURITY-BASED SWAP PARTICIPANT.—The term 'major security-based swap participant' has the same meaning as in section 1a(41) of the Commodity Exchange Act (7 U.S.C. 1a(41)).

''(68) PRUDENTIAL REGULATOR.—The term 'Prudential Regulator' has the same meaning as in section 1a(43) of the Commodity Exchange Act (7 U.S.C. 1a(43)).

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a(35) of the Commodity Exchange Act (7 U.S.C. 1a(35)).

''(70) SWAP DEALER.—The term 'swap dealer' has the same meaning as in section 1a(39) of the Commodity Exchange Act (7 U.S.C. 1a(39)).

''(71) SECURITY-BASED SWAP.—The term 'security-based swap' has the same meaning as in section 1a(38) of the Commodity Exchange Act (7 U.S.C. 1a(38)).

''(72) SECURITY-BASED SWAP DEALER.—The term 'security-based swap dealer' has the same meaning as in section 1a(44) of the Commodity Exchange Act (7 U.S.C. 1a(44)).''.

**SEC. 4202. SWAP REPOSITORIES.**

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3A:

**''SEC. 3B. SWAP REPOSITORIES.**

''(a) REQUIRED REPORTING.—

''(1) IN GENERAL.—

''(A) IN GENERAL.—Any security-based swap that is not accepted for clearing by any clearing agency shall be reported to either a security-based swap repository registered pursuant to subsection (b) or, if there is no repository that would accept the security-based swap, to the Commission in accordance with section 13A within such time period as the Commission may by rule prescribe.

''(B) AUTHORITY OF SWAP DEALER TO REPORT.—Counterparties to a security-based swap may agree as to which counterparty will report such swap as required by subparagraph (A). In any security-based swap where only one counterparty is a swap dealer, the swap dealer shall report the swap.

''(2) TRANSITION RULES.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

''(A) Security-based swaps that were entered into before the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than 270 days after the effective date of such Act.

''(B) Security-based swaps that were entered into on or after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009 shall be reported to a registered security-based swap repository or the Commission no later than the later of—

''(i) 180 days after the effective date of such Act; or

''(ii) such other time after entering into the swap as the Commission may prescribe by rule or regulation.

''(b) SECURITY-BASED SWAP REPOSITORIES.—

''(1) REGISTRATION REQUIREMENT.—

''(A) IN GENERAL.—It shall be unlawful for a security-based swap repository, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a security-based swap repository.

''(B) INSPECTION AND EXAMINATION.—Registered security-based swap repositories shall be subject to inspection and examination by any representatives of the Commission.

''(2) STANDARD SETTING.—

''(A) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap that shall be collected and maintained by each security-based swap repository.

''(B) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap repositories.

''(C) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies that clear security-based swaps.

''(3) DUTIES.—A security-based swap repository shall—

''(A) accept data prescribed by the Commission for each security-based swap under this paragraph (2);

''(B) maintain such data in such form and manner and for such period as may be required by the Commission;

''(C) provide to the Commission, or its designee, such information as is required by, and in a form and at a frequency to be determined by, the Commission, in order to comply with the public reporting requirements contained in section 13(m); and

''(D) make available, on a confidential basis, all data obtained by the security-based swap repository, including individual counterparty trade and position data, to the Commission, the appropriate Federal banking agencies, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice or to other persons the Commission deems appropriate, including foreign financial supervisors (including foreign futures authorities), foreign central banks, and foreign ministries.

''(4) REQUIRED REGISTRATION FOR SECURITY-BASED SWAP REPOSITORIES.—Any person that is required to be registered as a securities-based swap repository under this subsection shall register with the Commission, regardless of whether that person also is registered with the Commodity Futures Trading Commission as a swap repository.

''(5) HARMONIZATION OF RULES.—Not later than 270 days after the date of enactment of the Over-the-Counter Derivatives Markets Act of 2009, the Commission and the Commodity Futures Trading Commission shall jointly adopt uniform rules governing persons that are registered under this section and persons that are registered as swap repositories under the Commodity Exchange Act (7 U.S.C. 1, et seq.), including uniform rules that specify the data elements that shall be collected and maintained by each repository.

''(6) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a security-based swap repository from the requirements of this section if the Commission

finds that such security-based swap repository is subject to comparable, comprehensive supervision or regulation on a consolidated basis by the Commodity Futures Trading Commission, a Prudential Regulator or the appropriate governmental authorities in the organization's home country, or as necessary or appropriate in the public interest and consistent with the purposes of this Act.''.

(b) REPORTING AND RECORDKEEPING.—The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by inserting after section 13 the following section:

**''SEC. 13A. REPORTING AND RECORDKEEPING FOR CERTAIN SECURITY-BASED SWAPS.**

''(a) IN GENERAL.—Any person who enters into a security-based swap that is not accepted for clearing by any clearing agency and is not reported to a security-based swap repository registered pursuant to section 3B(b) shall meet the requirements in subsection (b).

''(b) REPORTS.—Any person described in subsection (a) shall—

''(1) make such reports in such form and manner and for such period as the Commission shall prescribe by rule or regulation regarding the security-based swaps held by the person; and

''(2) keep books and records pertaining to the security-based swaps held by the person in such form and manner and for such period as may be required by the Commission, which books and records shall be open to inspection by any representative of the Commission, an appropriate Federal banking agency, the Commodity Futures Trading Commission, the Financial Services Oversight Council, and the Department of Justice.

''(c) IDENTICAL DATA.—In adopting rules under this section, the Commission shall require persons described in subsection (a) to report the same or more comprehensive data than the Commission requires security-based swap repositories to collect.''.

(c) PUBLIC REPORTING AND REPOSITORIES FOR SECURITY-BASED SWAP AGREEMENTS.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

''(m) PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(1) IN GENERAL.—The Commission, or a person designated by the Commission pursuant to paragraph (2), shall make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions from the sources set forth in paragraph (3).

''(2) DESIGNEE OF THE COMMISSION.—The Commission may designate a clearing agency or a security-based swap repository to carry out the public reporting described in paragraph (1).

''(3) SOURCES OF INFORMATION.—The sources of the information to be publicly reported as described in paragraph (1) are—

''(A) clearing agencies;

''(B) security-based swap repositories registered pursuant to section 3B(b); and

''(C) reports received by the Commission pursuant to section 13A.''.

**SEC. 4203. MARGIN REQUIREMENTS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is amended by adding the following section after section 3B:

**''SEC. 3C. MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS.**

''Each Prudential Regulator shall impose both initial and variation margin requirements on all security-based swaps between security-based swap dealers and major security-based swap participants subject to regulation by the Regulator, that are not cleared by a clearing agency.''.

**SEC. 4204. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

The Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) is further amended by adding after section 3C (as added by section 4203) the following:

**''SEC. 3D. SEGREGATION OF ASSETS HELD AS COLLATERAL IN SWAP TRANSACTIONS.**

''(a) CLEARED SWAPS.—A security-based swap dealer or clearing agency by or through which funds or other property are held as margin or collateral to secure the obligations of a counterparty under a security-based swap to be cleared by or through a derivatives clearing agency shall segregate, maintain, and use the funds or other property for the benefit of the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator shall prescribe. Any such funds or other property shall be treated as customer property under this Act.

''(b) OVER-THE-COUNTER SWAPS.—At the request of a counterparty to a security-based swap who provides funds or other property to a swap dealer as margin or collateral to secure the obligations of the counterparty under a security-based swap entered into using the mails or any other means or instrumentalities of interstate commerce between the counterparty and the swap dealer that is not submitted for clearing to a derivatives clearing agency, the swap dealer shall segregate the funds or other property for the benefit of the counterparty, and maintain the funds or other property in an account which is carried by a third-party custodian and designated as a segregated account for the counterparty, in accordance with such rules and regulations as the Commission or Prudential Regulator may prescribe. This subsection shall not be interpreted to preclude commercial arrangements regarding the investment of the segregated funds or other property and the related allocation of gains and losses resulting from any such investment or regarding the allocation of the costs of segregation.

''(c) MARK-TO-MARKET MARGIN.—Nothing in this section shall be construed to obligate any person to segregate variation or mark-to-market margin.''.

## Subtitle C—Common Provisions

**SEC. 4301. REPORT TO THE CONGRESS.**

Within 1 year after the date of the enactment of this title, and not less frequently than annually thereafter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall review data from swap repositories, security-based swap repositories, derivative clearing organizations, and clearing agencies, and if the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators jointly find that the activities of swaps dealers, securities-based swaps dealers, major swap participants, or major security-based swap participants not subject to regulation by the Commodity Futures Trading Commission, the Securities and Exchange Commission, or a Prudential Regulator, in relation to swaps or security-based swaps that are not submitted to a derivatives clearing organization or clearing agency for clearing, have become so substantial or imprudent as to potentially threaten the stability of financial markets or the economy, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Prudential Regulators shall jointly submit to the Congress a report on the situation, including recommendations as to whether the activities should be subject to further regulation.

**SEC. 4302. CAPITAL REQUIREMENTS.**

Each Prudential Regulator shall take into account the swaps and security-based swaps activities of the entities subject to regulation by the Regulator in establishing capital requirements for the entities.

**SEC. 4303. CENTRALIZED CLEARING.**

(a) IN GENERAL.—The Board, in consultation and coordination with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall implement policies and procedures designed to increase the use of central counterparties for clearing of over-the-counter swaps transactions by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with the goal of significantly reducing the risk profile of the market in which the transactions occur.

(b) FIRM TARGETS.—

(1) IN GENERAL.—Pursuant to subsection (a), the Board shall establish the following firm goals for swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, with respect to the clearing of certain swaps:

(A) INTEREST RATE SWAPS.—In the case of interest rate swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 90 percent of new eligible trades (calculated on a notional basis);

(ii) 70 percent of new eligible trades (calculated on a weighted average notional basis); and

(iii) 60 percent of historical eligible trades (calculated on a weighted average notional basis).

(B) CREDIT DEFAULT SWAPS.—In the case of credit default swaps, each swap dealer, security-based swap dealer, major swap participant, and major security-based swap participant shall commit to a goal, beginning December 2009, of submitting for clearing to a derivatives clearing organization or clearing agency—

(i) 95 percent of new eligible trades (calculated on a notional basis); and

(ii) 80 percent of all eligible trades (calculated on a weighted average notional basis).

(2) DEFINITIONS.—In paragraph (1):

(A) ELIGIBLE TRADE.—The term ''eligible trade'' means a trade on an eligible product between counterparties each of whom—

(i) is a swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant; and

(ii) has a clearing relationship in place with 1 or more common derivative clearing organizations or clearing agencies) for the eligible product.

(B) ELIGIBLE PRODUCT.—The term ''eligible product'' means a product eligible for clearing by a derivative clearing organization or clearing agency.

(c) OTHER CONTRACTS AND COUNTERPARTIES.—The Board, in consultation with the Securities and Exchange Commission and the Commodity Futures Trading Commission, shall actively engage central counterparties and regulators globally to—

(1) broaden the set of derivative products eligible for clearing by swap dealers, security-based swap dealers, major swap participants, and major security-based swap participants, taking into account risk, liquidity, default management and other processes; and

(2) expand the set of counterparties eligible to clear at each eligible central counterparty taking into account appropriate counterparty risk management considerations, including the development of buy-side clearing.

**SEC. 4304. DEFINITIONS.**

The terms used in this subtitle shall have the meanings given the terms in section 1a of the Commodity Exchange Act.

## TITLE V—CORPORATE AND FINANCIAL INSTITUTION COMPENSATION FAIRNESS

**SEC. 5001. SHORT TITLE.**

This title may be cited as the ''Corporate and Financial Institution Compensation Fairness Act of 2009''.

**SEC. 5002. SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.**

(a) AMENDMENT TO THE SECURITIES EXCHANGE ACT OF 1934.—Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78n) is amended by adding at the end the following new subsection:

''(i) TRIENNIAL ADVISORY SHAREHOLDER VOTE ON EXECUTIVE COMPENSATION.—

''(1) IN GENERAL.—A proxy or consent or authorization for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), shall provide for a separate shareholder advisory vote, at least once every three years, to approve the registrant's executive compensation policies and practices as set forth pursuant to the Commission's disclosure rules. The shareholder vote shall be advisory in nature and shall not be binding on the issuer or its board of directors and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board, nor shall such vote be construed to restrict or limit the ability of shareholders to make proposals for inclusion in proxy materials related to executive compensation for meetings of shareholders at which such an advisory vote on executive compensation is not to be conducted.

''(2) OPT OUT.—If not less than ⅔ of votes cast at a meeting of shareholders on a proposal to opt out of the triennial shareholder advisory vote on executive compensation required under paragraph (1) are cast in favor of such a proposal, then such shareholder advisory vote required under such paragraph shall not be required to take place for a period of 5 years following the vote approving such proposal.

''(3) SHAREHOLDER APPROVAL OF GOLDEN PARACHUTE COMPENSATION.—

''(A) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 6 months after the date on which final rules are issued under paragraph (4), that concerns an acquisition, merger, consolidations, or proposed sale or other disposition of all or substantially all the assets of an issuer, the person making such solicitation shall disclose in the proxy or consent solicitation material, in a clear and simple tabular form in accordance with regulations to be promulgated by the Commission, any agreements or understandings that such person has with the named executive officers (as such term is defined in the rules promulgated by the Commission) of such issuer (or of the acquiring issuer, if such issuer is not the acquiring issuer) concerning any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to the acquisition, merger, consolidation, sale, or other dispositions of all or substantially all of the assets of the issuer, and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of such named executive officer.

''(B) SHAREHOLDER APPROVAL.—Any proxy or consent or authorization relating to the proxy or consent solicitation material containing the disclosure required by subparagraph (A) shall provide for a separate shareholder vote to approve such agreements or understandings and compensation as disclosed. A vote by the shareholders shall not be binding on the corporation or the board of directors of the issuer or the person making the solicitation and shall not be construed as overruling a decision by such board, nor to create or imply any additional fiduciary duty by such board.''

''(4) RULEMAKING.—Not later than 1 year after the date of the enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall issue rules and regulations to implement this subsection.''.

(b) STUDY AND REPORT.—The Securities and Exchange Commission shall conduct a study and review of the results of shareholder advisory votes on executive compensation held pursuant to this section and the effects of such votes. Not later than 5 years after the date of enactment of this title, the Securities and Exchange Commission shall submit a report to the Congress on the results of the study and review required by this subsection.

**SEC. 5003. COMPENSATION COMMITTEE INDEPENDENCE.**

(a) STANDARDS RELATING TO COMPENSATION COMMITTEES.—The Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after section 10A the following new section:

**''SEC. 10B. STANDARDS RELATING TO COMPENSATION COMMITTEES.**

''(a) COMMISSION RULES.—

''(1) IN GENERAL.—Effective not later than 270 days after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of subsections (b) through (f).

''(2) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under paragraph (1) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (1) before the imposition of such prohibition.

''(3) EXEMPTION AUTHORITY.—The Commission may exempt certain categories of issuers from the requirements of subsections (b) through (f), where appropriate in view of the purpose of this section. In determining appropriate exemptions, the Commission shall take into account, among other considerations, the potential impact on smaller reporting issuers.

''(4) NO FEDERAL PREEMPTION.—If the law of the State under which an issuer is incorporated provides for a procedure for the board of directors to establish an independent compensation committee, then such State law shall be controlling and nothing in this section shall preempt such State law.

''(b) INDEPENDENCE OF COMPENSATION COMMITTEES.—

''(1) IN GENERAL.—Each member of the compensation committee of the board of directors of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

''(2) CRITERIA.—The Commission shall, by rule, establish the criteria for determining whether a director is independent for purposes of this subsection. Such rules shall require that a member of a compensation committee of an issuer may not, other than in his or her capacity as a member of the compensation committee, the board of directors, or any other board committee—

''(A) accept any consulting, advisory, or other compensatory fee from the issuer; or

''(B) be an affiliated person of the issuer or any subsidiary thereof.

''(3) EXEMPTIVE AUTHORITY.—The Commission may exempt from the requirements of paragraph (2) a particular relationship with respect to compensation committee members, where appropriate in view of the purpose of this section.

''(4) DEFINITION.—As used in this section, the term 'compensation committee' means—

''(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of determining and approving the compensation arrangements for the executive officers of the issuer; and

''(B) if no such committee exists with respect to an issuer, the independent members of the entire board of directors.

''(c) INDEPENDENCE STANDARDS FOR COMPENSATION CONSULTANTS AND OTHER COMMITTEE ADVISORS.—The charter of the compensation committee of the board of directors of an issuer shall set forth that any outside compensation consultant formally engaged or retained by the compensation committee shall meet standards for independence to be promulgated by the Commission.

''(d) COMPENSATION COMMITTEE AUTHORITY RELATING TO COMPENSATION CONSULTANTS.—

''(1) IN GENERAL.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent compensation consultant. This provision shall not be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(2) DISCLOSURE.—In any proxy or consent solicitation material for an annual meeting of the shareholders (or a special meeting in lieu of the annual meeting) occurring on or after the date that is 1 year after the date of enactment of the Corporate and Financial Institution Compensation Fairness Act of 2009, each issuer shall disclose in the proxy or consent material, in accordance with regulations to be promulgated by the Commission whether the compensation committee of the issuer retained and obtained the advice of a compensation consultant meeting the standards for independence promulgated pursuant to subsection (c).

''(e) AUTHORITY TO ENGAGE INDEPENDENT COUNSEL AND OTHER ADVISORS.—The compensation committee of each issuer, in its capacity as a committee of the board of directors, shall have the authority, in its sole discretion, to retain and obtain the advice of independent counsel and other advisers meeting the standards for independence promulgated pursuant to subsection (c), and the compensation committee shall be directly responsible for the appointment, compensation, and oversight of the work of such independent counsel and other advisers. This provision shall not be construed to require the compensation committee to implement or

act consistently with the advice or recommendations of such independent counsel and other advisers, and shall not otherwise affect the compensation committee's ability or obligation to exercise its own judgment in fulfillment of its duties.

''(f) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the compensation committee, in its capacity as a committee of the board of directors, for payment of compensation—

''(1) to any compensation consultant to the compensation committee that meets the standards for independence promulgated pursuant to subsection (c); and

''(2) to any independent counsel or other adviser to the compensation committee.''.

(b) STUDY AND REVIEW REQUIRED.—

(1) IN GENERAL.—The Securities Exchange Commission shall conduct a study and review of the use of compensation consultants meeting the standards for independence promulgated pursuant to section 10B(c) of the Security Exchange Act of 1934 (as added by subsection (a)), and the effects of such use.

(2) REPORT TO CONGRESS.—Not later than 3 years after the date of enactment of this title, the Commission shall submit a report to the Congress on the results of the study and review required by this paragraph.

## TITLE VI—CREDIT RATING AGENCIES

### SEC. 6001. CHANGES TO DESIGNATION.

The Securities Act of 1933 and the Securities Exchange Act of 1934 are each amended by striking ''nationally recognized statistical rating'' each place it appears and inserting ''nationally registered statistical rating''.

### SEC. 6002. REMOVAL OF STATUTORY REFERENCES TO CREDIT RATINGS.

(a) FEDERAL DEPOSIT INSURANCE ACT.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 28(d)—

(A) in the subsection heading, by striking ''not of investment grade'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(C) in paragraph (2), by striking ''not of investment grade'';

(D) by striking paragraph (3) and redesignating paragraph (4) as paragraph (3); and

(E) in paragraph (3) (as so redesignated)—

(i) by striking subparagraph (A) and redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively; and

(ii) in subparagraph (B) (as so redesignated), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation'';

(2) in section 28(e)—

(A) in the subsection heading, by striking ''not of investment grade'';

(B) in paragraph (1), by striking ''not of investment grade'' and inserting ''that does not meet standards of credit-worthiness as established by the Corporation''; and

(C) in paragraphs (2) and (3), by striking ''not of investment grade'' each place that it appears and inserting ''that does not meet standards of credit-worthiness established by the Corporation''; and

(3) in section 7(b)(1)(E)(i), by striking ''credit rating entities, and other private economic'' and inserting ''private economic, credit,''.

(b) FEDERAL HOUSING ENTERPRISES FINANCIAL SAFETY AND SOUNDNESS ACT OF 1992.—Section 1319 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4519) is amended—

(1) in the section heading, by striking ''by rating organization''; and

(2) by striking ''that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934,''.

(c) INVESTMENT COMPANY ACT OF 1940.—Section 6(a)(5)(A)(iv)(I) of the Investment Company Act of 1940 (15 U.S.C. 80a-6(a)(5)(A)(iv)(I)) is amended by striking ''is rated investment grade by not less than 1 nationally recognized statistical rating organization'' and inserting ''meets such standards of credit-worthiness that the Commission shall adopt''.

(d) REVISED STATUTES.—Section 5136A of title LXII of the Revised Statutes of the United States (12 U.S.C. 24a) is amended—

(1) in subsection (a)(2)(E), by striking ''any applicable rating'' and inserting ''standards of credit worthiness established by the Comptroller of the Currency'';

(2) in the heading for subsection (a)(3) by striking ''rating or comparable requirement'' and inserting ''requirement'';

(3) in subsection (a)(3), by amending subparagraph (A) to read as follows:

''(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.'';

(4) in the heading for subsection (f), by striking ''maintain public rating or'' and inserting ''meet standards of credit-worthiness''; and

(5) in subsection (f)(1), by striking ''any applicable rating'' and inserting ''standards of credit-worthiness established by the Comptroller of the Currency''.

(e) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) Securities Exchange Act of 1934 (15 U.S.C. 78a(3)(a)) is amended—

(1) in paragraph (41), by striking ''is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization'' and inserting ''meets standards of credit-worthiness as defined by the Commission''; and

(2) in paragraph (53)(A), by striking ''is rated in 1 of the 4 highest rating categories by at least 1 nationally recognized statistical rating organization'' and inserting ''meets standards of credit-worthiness as defined by the Commission''.

(f) WORLD BANK DISCUSSIONS.—Section 3(a)(6) of the amendment in the nature of a substitute to the text of H.R. 4645, as ordered reported from the Committee on Banking, Finance and Urban Affairs on September 22, 1988, as enacted into law by section 555 of Public Law 100-461, (22 U.S.C. 286hh(a)(6)), is amended by striking ''rating'' and inserting ''worthiness''.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect after the end of the 6-month period beginning on the date of the enactment of this title.

### SEC. 6003. REVIEW OF RELIANCE ON RATINGS.

(a) AGENCY REVIEW.—

(1) REVIEW.—Not later than 1 year after the date of the enactment of this title, each Federal agency listed in paragraph (4) shall, to the extent applicable, review—

(A) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and

(B) any references to or requirements in such regulations regarding credit ratings.

(2) MODIFICATIONS REQUIRED.—Each such agency shall modify any such regulations identified by the review conducted under paragraph (1) to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In making such determination, such agencies shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by each such agency, taking into account the entities regulated by each such agency and the purposes for which such entities would rely on such standards of credit-worthiness.

(3) REPORT.—Upon conclusion of the review required under paragraph (1), each Federal agency listed in paragraph (4) shall transmit a report to the Congress containing a description of any modification of any regulation such agency made pursuant to paragraph (2).

(4) APPLICABLE AGENCIES.—The agencies required to conduct the review and report required by this subsection are—

(A) the Securities and Exchange Commission;

(B) the Federal Deposit Insurance Corporation;

(C) the Office of Thrift Supervision;

(D) the Office of the Comptroller of the Currency;

(E) the Board of Governors of the Federal Reserve;

(F) the National Credit Union Administration; and

(G) the Federal Housing Finance Agency.

(b) GAO REVIEW OF OTHER AGENCIES.—

(1) REVIEW.—The Comptroller General of the United States shall conduct a comprehensive review of the use of credit ratings by Federal agencies other than those listed in subsection (a)(4), including an analysis of the provisions of law or regulation applicable to each such agency that refer to and require the use of credit ratings by the agency, and the policies and practices of each agency with respect to credit ratings.

(2) REPORT.—Not later than 1 year after the date of the enactment of this title, the Comptroller General shall transmit to the Congress a report on the findings of the study conducted pursuant to paragraph (1), including recommendations for any legislation or rulemaking necessary or appropriate in order for such agencies to reduce their reliance on credit ratings.

## TITLE VII—GOVERNMENT-SPONSORED ENTERPRISES REFORM

### SEC. 7001. SHORT TITLE.

This title may be cited as the ''Government-Sponsored Enterprises Free Market Reform Act of 2009''.

### SEC. 7002. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) CHARTER.—The term ''charter'' means—

(A) with respect to the Federal National Mortgage Association, the Federal National Mortgage Association Charter Act (12 U.S.C. 1716 et seq.); and

(B) with respect to the Federal Home Loan Mortgage Corporation, the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 et seq.).

(2) DIRECTOR.—The term ''Director'' means the Director of the Federal Housing Finance Agency.

(3) ENTERPRISE.—The term ''enterprise'' means—

(A) the Federal National Mortgage Association; and

(B) the Federal Home Loan Mortgage Corporation.

(4) GUARANTEE.—The term ''guarantee'' means, with respect to an enterprise, the credit support of the enterprise that is provided by the Federal Government through its charter as a Government-sponsored enterprise.

### SEC. 7003. TERMINATION OF CURRENT CONSERVATORSHIP.

(a) IN GENERAL.—Upon the expiration of the period referred to in subsection (b), the

Director of the Federal Housing Finance Agency shall determine, with respect to each enterprise, if the enterprise is financially viable at that time and—

(1) if the Director determines that the enterprise is financially viable, immediately take all actions necessary to terminate the conservatorship for each of the enterprises; or

(2) if the Director determines that the enterprise is not financially viable, immediately appoint the Federal Housing Finance Agency as receiver under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and carry out such receivership under the authority of such section.

(b) TIMING.—The period referred to in this subsection is, with respect to an enterprise—

(1) except as provided in paragraph (2), the 24-month period beginning upon the date of the enactment of this title; or

(2) if the Director determines before the expiration of the period referred to in paragraph (1) that the financial markets would be adversely affected without the extension of such period under this paragraph with respect to that enterprise, the 30-month period beginning upon the date of the enactment of this title.

(c) FINANCIAL VIABILITY.—The Director may not determine that an enterprise is financially viable for purposes of subsection (a) if the Director determines that any of the conditions for receivership set forth in paragraph (3) or (4) of section 1367(a) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(a)) exists at the time with respect to the enterprise.

**SEC. 7004. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.**

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 7003(b), if the Director makes the determination under section 7003(a)(1), the following provisions shall take effect:

(1) PORTFOLIO LIMITATIONS.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended by adding at the end the following new section:

**"SEC. 1369E. RESTRICTION ON MORTGAGE ASSETS OF ENTERPRISES.**

''(a) RESTRICTION.—No enterprise shall own, as of any applicable date in this subsection or thereafter, mortgage assets in excess of—

''(1) upon the expiration of the period referred to in section 7003(b) of the Government-Sponsored Enterprises Free Market Reform Act of 2009, $850,000,000,000; or

''(2) on December 31 of each year thereafter, 80.0 percent of the aggregate amount of mortgage assets of the enterprise as of December 31 of the immediately preceding calendar year;

except that in no event shall an enterprise be required under this section to own less than $250,000,000,000 in mortgage assets.

''(b) DEFINITION OF MORTGAGE ASSETS.—For purposes of this section, the term 'mortgage assets' means, with respect to an enterprise, assets of such enterprise consisting of mortgages, mortgage loans, mortgage-related securities, participation certificates, mortgage-backed commercial paper, obligations of real estate mortgage investment conduits and similar assets, in each case to the extent such assets would appear on the balance sheet of such enterprise in accordance with generally accepted accounting principles in effect in the United States as of September 7, 2008 (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board from time to time; and without giving any effect to any change that may be made after September 7, 2008, in respect of Statement of Financial Accounting Standards No. 140 or any similar accounting standard).''.

(2) INCREASE IN MINIMUM CAPITAL REQUIREMENT.—Section 1362 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4612), as amended by section 1111 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is amended—

(A) in subsection (a), by striking ''For purposes of this subtitle, the minimum capital level for each enterprise shall be'' and inserting ''The minimum capital level established under subsection (g) for each enterprise may not be lower than'';

(B) in subsection (c)—

(i) by striking ''subsections (a) and'' and inserting ''subsection'';

(ii) by striking ''regulated entities'' the first place such term appears and inserting ''Federal Home Loan Banks'';

(iii) by striking ''for the enterprises,'';

(iv) by striking '', or for both the enterprises and the banks,'';

(v) by striking ''the level specified in subsection (a) for the enterprises or''; and

(vi) by striking ''the regulated entities operate'' and inserting ''such banks operate'';

(C) in subsection (d)(1)—

(i) by striking ''subsections (a) and'' and inserting ''subsection''; and

(ii) by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(D) in subsection (e), by striking ''regulated entity'' each place such term appears and inserting ''Federal home loan bank'';

(E) in subsection (f)—

(i) by striking ''the amount of core capital maintained by the enterprises,''; and

(ii) by striking ''regulated entities'' and inserting ''banks''; and

(F) by adding at the end the following new subsection:

''(g) ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.—

''(1) IN GENERAL.—The Director shall cause the enterprises to achieve and maintain adequate capital by establishing minimum levels of capital for the enterprises and by using such other methods as the Director deems appropriate.

''(2) AUTHORITY.—The Director shall have the authority to establish such minimum level of capital for an enterprise in excess of the level specified under subsection (a) as the Director, in the Director's discretion, deems to be necessary or appropriate in light of the particular circumstances of the enterprise.

''(h) FAILURE TO MAINTAIN REVISED MINIMUM CAPITAL LEVELS.—

''(1) UNSAFE AND UNSOUND PRACTICE OR CONDITION.—Failure of an enterprise to maintain capital at or above its minimum level as established pursuant to subsection (c) of this section may be deemed by the Director, in his discretion, to constitute an unsafe and unsound practice or condition within the meaning of this title.

''(2) DIRECTIVE TO ACHIEVE CAPITAL LEVEL.—

''(A) AUTHORITY.—In addition to, or in lieu of, any other action authorized by law, including paragraph (1), the Director may issue a directive to an enterprise that fails to maintain capital at or above its required level as established pursuant to subsection (c) of this section.

''(B) PLAN.—Such directive may require the enterprise to submit and adhere to a plan acceptable to the Director describing the means and timing by which the enterprise shall achieve its required capital level.

''(C) ENFORCEMENT.—Any such directive issued pursuant to this paragraph, including plans submitted pursuant thereto, shall be enforceable under the provisions of subtitle C of this title to the same extent as an effective and outstanding order issued pursuant to subtitle C of this title which has become final.

''(3) ADHERENCE TO PLAN.—

''(A) CONSIDERATION.—The Director may consider such enterprise's progress in adhering to any plan required under this subsection whenever such enterprise seeks the requisite approval of the Director for any proposal which would divert earnings, diminish capital, or otherwise impede such enterprise's progress in achieving its minimum capital level.

''(B) DENIAL.—The Director may deny such approval where it determines that such proposal would adversely affect the ability of the enterprise to comply with such plan.''.

(3) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185) is hereby repealed.

(ii) AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Section 1203 of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 225) is hereby repealed.

(B) REPEAL OF GENERAL LIMIT AND PERMANENT HIGH-COST AREA INCREASE.—Paragraph (2) of section 302(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and paragraph (2) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) are each amended to read as such sections were in effect immediately before the enactment of the Housing and Economic Recovery Act of 2008 (Public Law 110–289).

(C) REPEAL OF NEW HOUSING PRICE INDEX.—Section 1322 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as added by section 1124(d) of the Housing and Economic Recovery Act of 2008 (Public Law 110–289), is hereby repealed.

(D) REPEAL.—Section 1124 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289) is hereby repealed.

(E) ESTABLISHMENT OF CONFORMING LOAN LIMIT.—For the year in which the expiration of the period referred to in section 7003(b) of this section occurs, the limitations governing the maximum original principal obligation of conventional mortgages that may be purchased by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, referred to in section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), respectively, shall be considered to be—

(i) $417,000 for a mortgage secured by a single-family residence,

(ii) $533,850 for a mortgage secured by a 2-family residence,

(iii) $645,300 for a mortgage secured by a 3-family residence, and

(iv) $801,950 for a mortgage secured by a 4-family residence,

and such limits shall be adjusted effective each January 1 thereafter in accordance with such sections 302(b)(2) and 305(a)(2).

(F) PROHIBITION OF PURCHASE OF MORTGAGES EXCEEDING MEDIAN AREA HOME PRICE.—

(i) FANNIE MAE.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(2)) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision

of this title, the corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(ii) FREDDIE MAC.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) is amended by adding at the end the following new sentence: ''Notwithstanding any other provision of this title, the Corporation may not purchase any mortgage for a property having a principal obligation that exceeds the median home price, for properties of the same size, for the area in which such property subject to the mortgage is located.''.

(4) REQUIREMENT TO PAY STATE AND LOCAL TAXES.—

(A) FANNIE MAE.—Paragraph (2) of section 309(c) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(c)(2)) is amended—

(i) by striking ''shall be exempt from'' and inserting ''shall be subject to''; and

(ii) by striking ''except that any'' and inserting ''and any''.

(B) FREDDIE MAC.—Section 303(e) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(e)) is amended—

(i) by striking ''shall be exempt from'' and inserting ''shall be subject to''; and

(ii) by striking ''except that any'' and inserting ''and any''.

(5) REPEALS RELATING TO REGISTRATION OF SECURITIES.—

(A) FANNIE MAE.—

(i) MORTGAGE-BACKED SECURITIES.—Section 304(d) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(d)) is amended by striking the fourth sentence.

(ii) SUBORDINATE OBLIGATIONS.—Section 304(e) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(e)) is amended by striking the fourth sentence.

(B) FREDDIE MAC.—Section 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455) is amended by striking subsection (g).

(6) RECOUPMENT OF COSTS FOR FEDERAL GUARANTEE.—

(A) ASSESSMENTS.—The Director of the Federal Housing Finance Agency shall establish and collect from each enterprise assessments in the amount determined under subparagraph (B). In determining the method and timing for making such assessments, the Director shall take into consideration the determinations and conclusions of the study under subsection (b) of this section.

(B) DETERMINATION OF COSTS OF GUARANTEE.—Assessments under subparagraph (A) with respect to an enterprise shall be in such amount as the Director determines necessary to recoup to the Federal Government the full value of the benefit the enterprise receives from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprise, based upon the dollar value of such benefit in the market to such enterprise when not operating under conservatorship or receivership. To determine such amount, the Director shall establish a risk-based pricing mechanism as the Director considers appropriate, taking into consideration the determinations and conclusions of the study under subsection (b) of this section.

(C) TREATMENT OF RECOUPED AMOUNTS.—The Director shall cover into the general fund of the Treasury any amounts received from assessments made under this paragraph.

(b) GAO STUDY REGARDING RECOUPMENT OF COSTS FOR FEDERAL GOVERNMENT GUARANTEE.—The Comptroller General of the United States shall conduct a study to determine a risk-based pricing mechanism to accurately determine the value of the benefit the enterprises receive from the guarantee provided by the Federal Government for the obligations and financial viability of the enterprises. Such study shall establish a dollar value of such benefit in the market to each enterprise when not operating under conservatorship or receivership, shall analyze various methods of the Federal Government assessing a charge for such value received (including methods involving an annual fee or a fee for each mortgage purchased or securitized), and shall make a recommendation of the best such method for assessing such charge. Not later than 12 months after the date of the enactment of this title, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

**SEC. 7005. REQUIREMENT TO PERIODICALLY RENEW CHARTER UNTIL WIND DOWN AND DISSOLUTION.**

(a) REQUIRED RENEWAL; WIND DOWN AND DISSOLUTION UPON NON-RENEWAL.—Upon the expiration of the 3-year period that begins upon the expiration of the period referred to in section 7003(b), unless the charter of an enterprise is renewed pursuant to subsection (b) of this section, section 7006 (relating to wind down of operations and dissolution of enterprise) shall apply to the enterprise.

(b) RENEWAL PROCEDURE.—

(1) APPLICATION; TIMING.—The Director shall provide for each enterprise to apply to the Director, before the expiration of the 3-year period under subsection (a), for renewal of the charter of the enterprise.

(2) STANDARD.—The Director shall approve the application of an enterprise for the renewal of the charter of the enterprise if—

(A) the application includes a certification by the enterprise that the enterprise is financially sound and is complying with all provisions of, and amendments made by, section 7004 of this title applicable to such enterprise; and

(B) the Director verifies that the certification made pursuant to subparagraph (A) is accurate.

(c) OPTION TO REAPPLY.—Nothing in this section may be construed to require an enterprise to apply under this section for renewal of the charter of the enterprise.

**SEC. 7006. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.**

(a) APPLICABILITY.—This section shall apply to an enterprise—

(1) upon the expiration of the 3-year period referred to in such section 7005(a), to the extent provided in such section; and

(2) if this section has not previously applied to the enterprise, upon the expiration of the 6-year period that begins upon the expiration of the period referred to in section 7003(b).

(b) WIND DOWN.—Upon the applicability of this section to an enterprise, the Director and the Secretary of the Treasury shall jointly take such action, and may prescribe such regulations and procedures, as may be necessary to wind down the operations of an enterprise as an entity chartered by the United States Government over the duration of the 10-year period beginning upon the applicability of this section to the enterprise (pursuant to subsection (a)) in an orderly manner consistent with this title and the ongoing obligations of the enterprise.

(c) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (b)—

(1) shall include the establishment and execution of plans to provide for an equitable division and distribution of assets and liabilities of the enterprise, including any liability of the enterprise to the United States Government or a Federal reserve bank that may continue after the end of the period described in subsection (b); and

(2) may provide for establishment of—

(A) a holding corporation organized under the laws of any State of the United States or the District of Columbia for the purposes of the reorganization and restructuring of the enterprise; and

(B) one or more trusts to which to transfer—

(i) remaining debt obligations of the enterprise, for the benefit of holders of such remaining obligations; or

(ii) remaining mortgages held for the purpose of backing mortgage-backed securities, for the benefit of holders of such remaining securities.

(d) REPEAL OF CHARTER.—Effective upon the expiration of the 10-year period referred to in subsection (b) for an enterprise, the charter for the enterprise is repealed, except that the provisions of such charter in effect immediately before such repeal shall continue to apply with respect to the rights and obligations of any holders of outstanding debt obligations and mortgage-backed securities of the enterprise.

## TITLE VIII—FEDERAL INSURANCE OFFICE

**SEC. 8001. SHORT TITLE.**

This title may be cited as the ''Federal Insurance Office Act of 2009''.

**SEC. 8002. FEDERAL INSURANCE OFFICE ESTABLISHED.**

(a) ESTABLISHMENT OF OFFICE.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by transferring and inserting section 312 after section 313;

(2) by redesignating sections 313 and 312 (as so transferred) as sections 312 and 315, respectively; and

(3) by inserting after section 312 (as so redesignated) the following new sections:

**''SEC. 313. FEDERAL INSURANCE OFFICE.**

''(a) ESTABLISHMENT OF OFFICE.—There is established the Federal Insurance Office as an office in the Department of the Treasury.

''(b) LEADERSHIP.—The Office shall be headed by a Director, who shall be appointed by the Secretary of the Treasury. The position of such Director shall be a career reserved position in the Senior Executive Service.

''(c) FUNCTIONS.—

''(1) AUTHORITY PURSUANT TO DIRECTION OF SECRETARY.—The Office shall have the authority, pursuant to the direction of the Secretary, as follows:

''(A) To monitor the insurance industry to gain expertise.

''(B) To identify issues or gaps in the regulation of insurers that could contribute to a systemic crisis in the insurance industry or the United States financial system.

''(C) To recommend for review by the Market Stability and Capital Adequacy Board any activities or practices by insurers or their affiliates that may be exacerbating systemic risk.

''(D) To assist the Secretary in administering the Terrorism Insurance Program established in the Department of the Treasury under the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note).

''(E) To coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters, including representing the United States as appropriate in the International Association of Insurance Supervisors or any successor organization and assisting the Secretary in negotiating covered agreements.

''(F) To determine, in accordance with subsection (f), whether State insurance measures are preempted by covered agreements.

''(G) To consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance.

''(H) To perform such other related duties and authorities as may be assigned to it by the Secretary.

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

''(d) SCOPE.—The authority of the Office shall extend to all lines of insurance except health insurance, as determined by the Secretary based on section 2791 of the Public Health Service Act (42 U.S.C. 300gg-91).

''(e) GATHERING OF INFORMATION.—

''(1) GENERAL.—In carrying out its functions under subsection (c), the Office may request, receive, and collect data and information on and from the insurance industry and insurers, enter into information-sharing agreements, analyze and disseminate data and information, and issue reports regarding all lines of insurance except health insurance.

''(2) COLLECTION OF INFORMATION FROM INSURERS AND AFFILIATES.—Except as provided in paragraph (3) and subject to paragraph (4), the Office may require an insurer, or affiliate of an insurer, to submit such data or information that the Office may reasonably require in carrying out its functions under subsection (c). Notwithstanding subsection (p) and for the purposes of this paragraph only, the term 'insurer' means any entity that is authorized to write insurance or reinsure risks and issue contracts or policies in one or more States.

''(3) EXCEPTION FOR SMALL INSURERS.—Paragraph (2) shall not apply with respect to any insurer or affiliate thereof that meets a minimum size threshold that may be established by the Office by order or rule. Such threshold shall be appropriate to the particular request and need for the data or information.

''(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (2) from an insurer, or affiliate of an insurer, the Office shall coordinate with each relevant Federal agency and State insurance regulator (or other relevant Federal or State regulatory agency, if any, in the case of an affiliate of an insurer) and any publicly available sources to determine if the information to be collected is available from, or may be obtained in a timely manner by, such Federal agency or State insurance regulator, individually or collectively, other regulatory agency, or publicly available sources. If the Director determines that such data or information is available, or may be obtained in a timely manner, from such an agency, regulator, regulatory agency, or source, the Director shall obtain the data or information from such agency, regulator, regulatory agency, or source. If the Director determines that such data or information is not so available, the Director may collect such data or information from an insurer (or affiliate) only if the Director complies with the requirements of subchapter I of chapter 35 of title 44, United States Code (relating to Federal information policy; commonly known as the Paperwork Reduction Act) in collecting such data or information. Notwithstanding any other provision of law, each such relevant Federal agency and State insurance regulator or other Federal or State regulatory agency is authorized to provide to the Office such data or information.

''(5) CONFIDENTIALITY.—

''(A) The submission of any non-publicly available data and information to the Office under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

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

''(C) Any data or information obtained by the Office may be made available to State insurance regulators individually or collectively through an information sharing agreement that shall comply with applicable Federal law and that shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including the rules of any Federal or State Court) to which the data or information is otherwise subject.

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

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

''(1) STANDARD.—A State insurance measure shall be preempted pursuant to this section or section 314 if, and only to the extent that the Director determines, in accordance with this subsection, that the measure—

''(A) directly results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a United States insurer domiciled, licensed, admitted, or otherwise authorized in that State; and

''(B) is inconsistent with a covered agreement that is entered into on a date after the date of the enactment of this Act.

''(2) DETERMINATION.—

''(A) NOTICE OF POTENTIAL INCONSISTENCY.—Before making any determination of inconsistency, the Director shall—

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

''(ii) notify and consult with the United States Trade Representative regarding any potential inconsistency or preemption;

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

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

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

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

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

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

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

''(vi) consider any comments received.

The Director shall provide the notifications required under clauses (i), (ii), and (iii) contemporaneously.

''(B) SCOPE OF REVIEW.—For purposes of this section, the Director's determination of State insurance measures shall be limited to the subject matter of the prudential measures applicable to the business of insurance contained within the covered agreement involved.

''(C) NOTICE OF DETERMINATION OF INCONSISTENCY.—Upon making any determination of inconsistency, the Director shall—

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

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

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

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

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

''(B) notify the appropriate State.

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

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

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

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

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

''(1) preempt any State insurance measure that governs any insurer's rates, premiums, underwriting or sales practices, or State coverage requirements for insurance, or to the application of the antitrust laws of any State to the business of insurance;

''(2) preempt any State insurance measure governing the capital or solvency of an insurer, except to the extent that such State insurance measure directly results in less favorable treatment of a non-United States insurer than a United States insurer;

''(3) be construed to alter, amend, or limit the responsibility of any department or agency of the Federal Government to issue regulations under the Truth in Lending Act (15 U.S.C. 1601 et seq.) or any other Federal law regulating the provision of consumer financial products or services;

''(4) preempt any State insurance measure because of inconsistency with any agreement that is not a covered agreement (as such term in defined in subsection (p)); or

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

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

''(l) RETENTION OF AUTHORITY OF FEDERAL FINANCIAL REGULATORY AGENCIES.—Nothing

in this section or section 314 shall be construed to limit the authority of any Federal financial regulatory agency, including the authority to develop and coordinate policy, negotiate, and enter into agreements with foreign governments, authorities, regulators, and multi-national regulatory committees and to preempt State measures to affect uniformity with international regulatory agreements.

''(m) RETENTION OF AUTHORITY OF UNITED STATES TRADE REPRESENTATIVE.—Nothing in this section or section 314 shall be construed to affect the authority of the Office of the United States Trade Representative pursuant to section 141 of the Trade Act of 1974 (19 U.S.C. 2171) or any other provision of law, including authority over the development and coordination of United States international trade policy and the administration of the United States trade agreements program.

''(n) REPORTS TO CONGRESS.—

''(1) ANNUAL REPORT.—Beginning September 30, 2011, the Director shall submit a report on or before September 30 of each calendar year to the President and to the Committees on Financial Services and Ways and Means of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Finance of the Senate on the insurance industry, any actions taken by the office pursuant to subsection (f) (regarding preemption of inconsistent State insurance measures).

''(2) OTHER REPORTS.—The Director shall submit to the President and the Committees referred to in paragraph (1) any other information or reports as deemed relevant by the Director or as requested by the Chairman or Ranking Member of any of such Committees.

''(o) USE OF EXISTING RESOURCES.—To carry out this section, the Office may employ personnel, facilities, and other Department of the Treasury resources available to the Secretary and the Secretary shall dedicate specific personnel to the Office.

''(p) DEFINITIONS.—For purposes of this section and section 314, the following definitions shall apply:

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

''(2) COVERED AGREEMENT.—The term 'covered agreement' means a written bilateral or multilateral recognition agreement that—

''(A) is entered into between the United States and one or more foreign governments, authorities, or regulatory entities; and

''(B) provides for recognition of prudential measures with respect to the business of insurance or reinsurance that achieves a level of protection for insurance or reinsurance consumers that is substantially equivalent to the level of protection achieved under State insurance or reinsurance regulation.

''(3) DETERMINATION OF INCONSISTENCY.—The term 'determination of inconsistency' means a determination that a State insurance measure is preempted under subsection (f).

''(4) FEDERAL FINANCIAL REGULATORY AGENCY.—The term 'Federal financial regulatory agency' means the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, or the National Credit Union Administration.

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

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

''(7) OFFICE.—The term 'Office' means the Federal Insurance Office established by this section.

''(8) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

''(9) STATE.—The term 'State' means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

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

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

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

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

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

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

**''SEC. 314. COVERED AGREEMENTS.**

''(a) AUTHORITY.—The Secretary and the United States Trade Representative are authorized, jointly, to negotiate and enter into covered agreements on behalf of the United States.

''(b) REQUIREMENTS FOR CONSULTATION WITH CONGRESS.—

''(1) IN GENERAL.—Before initiating negotiations to enter into a covered agreement under subsection (a), during such negotiations, and before entering into any such agreement, the Secretary and the United States Trade Representative shall jointly consult with the Committee on Financial Services and the Committee on Ways and Means of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs and the Committee on Finance of the Senate.

''(2) SCOPE.—The consultation described in paragraph (1) shall include consultation with respect to—

''(A) the nature of the agreement;

''(B) how and to what extent the agreement will achieve the applicable purposes, policies, priorities, and objectives of section 313 and this section; and

''(C) the implementation of the agreement, including the general effect of the agreement on existing State laws.

''(c) SUBMISSION AND LAYOVER PROVISIONS.—A covered agreement under subsection (a) may enter into force with respect to the United States only if—

''(1) the Secretary and the United States Trade Representative jointly submit to the congressional committees specified in subsection (b)(1), on a day on which both Houses of Congress are in session, a copy of the final legal text of the agreement; and

''(2) a period of 90 calendar days beginning on the date on which the copy of the final legal text of the agreement is submitted to the congressional committees under paragraph (1) has expired.''.

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

(1) in paragraph (7), by striking ''and'' at the end;

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

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

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

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

''Sec. 312. Terrorism and Financial Intelligence.
''Sec. 313. Federal Insurance Office.
''Sec. 314. Covered agreements.
''Sec. 315. Continuing in office.''.

**SEC. 8003. REPORT ON GLOBAL REINSURANCE MARKET.**

Not later than September 30, 2011, the Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the breadth and scope of the global reinsurance market and the critical role such market plays in supporting insurance in the United States.

**SEC. 8004. STUDY ON MODERNIZATION AND IMPROVEMENT OF INSURANCE REGULATION IN THE UNITED STATES.**

(a) STUDY.—The Director of the Federal Insurance Office appointed under section 313(b) of title 31, United States Code (as amended by section 8002(a)(3) of this title) shall conduct a study on how to modernize and improve the system of insurance regulation in the United States. Such study shall include consideration of the following:

(1) Effective systemic risk regulation with respect to insurance.

(2) Strong capital standards and an appropriate match between capital allocation and liabilities for all risk.

(3) Meaningful and consistent consumer protection for insurance products and practices.

(4) Increased national uniformity through either a Federal charter or effective action by the States.

(5) Improved and broadened regulation of insurance companies and affiliates on a consolidated basis, including affiliates outside of the traditional insurance business.

(6) International coordination.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

(1) the results of the study conducted under subsection (a); and

(2) any legislative, administrative, or regulatory recommendations that the Director considers appropriate to modernize and improve the system of insurance regulation in the United States.

(c) CONSULTATION.—In carrying out subsections (a) and (b), the Director shall consult with State insurance commissioners, consumer organizations, representatives of the insurance industry, policyholders, and other persons, as the Director considers appropriate.

The Acting CHAIR. Pursuant to House Resolution 964, the gentleman from Alabama (Mr. BACHUS) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentleman from Alabama.

Mr. BACHUS. Madam Chairman, I yield myself 3 minutes.

Madam Chair, the gentleman from Maryland (Mr. HOYER) just talked about we're not going to call time out. But, ladies and gentlemen, the American people are calling time out. They are ready to put this Congress and this administration and the Federal Reserve into timeout. The time has expired on bailouts. That's the message we are hearing all over America. Americans are saying no more bailouts, and they are saying no more bailout funds.

That's the primary difference between the Democratic plan and the Republican plan. Once and for all, we say no more bailouts.

The American people, quite frankly, don't care about the mechanics. They don't care about the details. What they do care is that they be treated fairly, and they not be obligated for a risk that they didn't take. That's our plan. It's that simple. If bankruptcy is good enough for American citizens, if it's good enough for small businesses, if it's good enough for 999 of America's corporations, it ought to be good enough for the largest ''too big to fail'' institutions, and that's the last thing we put to death with our plan. There won't be any more ''too big to fail.'' You take risk or you loan or allow people to take risk with your money, you lose; not the American people.

No more bailouts. No more bailouts. Vote for the Republican substitute.

I reserve the balance of my time.

Mr. FRANK of Massachusetts. I claim the time in opposition.

The Acting CHAIR. The gentleman is recognized for 15 minutes.

Mr. FRANK of Massachusetts. I first yield myself 1 minute to say, we agree, no more bailouts. The Republicans cannot accept the fact that we have a bill that bans them. It specifically does not allow what happened.

Last year, Bush administration officials decided to use section 13(3) of the Federal Reserve to provide funds for the creditors of Bear Stearns and for AIG itself. That would not be legally possible under the bill we put forward.

Similarly, we have funds that come not from the taxpayers, but from an assessment on large financial institutions which can be used explicitly, not for any failed institution, but can be used when that institution is being put out of business in case it is necessary to prevent that failure from having negative destabilizing effects. The Republicans don't want to do that.

He said that the major difference is—another difference—we have a number of provisions in here to make it less likely that that will happen. Yes, if a big institution gets overly indebted and fails, it ought to be allowed to fail and we will have to deal with the consequences. But it would also be better not cavalierly to say, Let 'em fail. Let's try to stop it.

I now yield 2 minutes to the gentleman from Illinois (Mr. GUTIERREZ).

Mr. GUTIERREZ. Madam Chair, I would like to take that time to enter into a colloquy with the chairman.

Chairman FRANK, while I continue to strongly support the amendment that I offered during the Financial Services Committee markup changing the assessment base for FDIC deposit insurance funds payments from domestic deposits to total assets less tangible equity, it has come to my attention that the change adopted by the committee may result in disproportionate impacts on certain types of specialized banks, including custodians and bankers' banks.

A provision you included in the manager's amendment would address this issue and require the FDIC to make appropriate adjustments to the assessment base for custodians and bankers' banks. The FDIC has advised my staff that the revised version of this provision will give the agency sufficient flexibility.

I appreciate your willingness to accept this change to address the legitimate issues raised by the specialized business models of custodians and bankers' banks.

Mr. FRANK of Massachusetts. If the gentleman would yield, I would say, yes, this is another example of the superiority over this bill to the Republican substitute, because the gentleman from Illinois took the lead in addressing the unfairness of having smaller banks have to contribute, we believe, disproportionately, to the insurance fund, because of the risky problems of big banks. He has got in here language that addresses that. It's one reason why the independent community bankers like our bill.

Yes, I will continue to work with him. I did want to do that now to stress that in this bill, as opposed to the Republican substitute, there is some redress. Big banks will have to pay more and smaller banks less because of the riskiness of what they do.

I thank the gentleman.

Mr. GUTIERREZ. Thank you.

I was hoping to bring up with you a very important subject that is vital to the health of our community banks. With the changes that this legislation makes to the DIF assessments, any funds from the Federal Home Loan Banks that banks have on their books would be doubly assessed by the FDIC. I understand the FDIC's reasoning behind the premiums on FHLB funds, but since these funds are now taken into account in the new assessment base, I believe these premiums to be duplicative. I am hoping that you will work with me and the FDIC to address my concerns about these premiums.

Mr. FRANK of Massachusetts. Yes. Again, if the gentleman would yield, this illustrates one other area where the legislation we have is far better and more responsive to the needs of small banks than the Republican bill. This improves on it, and I agree with him.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Madam Chair, the Democratic bill is silent on the root cause of the financial collapse. It was the government-sponsored enterprises, Fannie and Freddie, that were at the heart of the housing market and largely responsible for the proliferation of subprime and Alt-A mortgages throughout the financial system. Over the years, they loaded up on over $1 trillion worth of these junk loans.

Frankly, Fannie and Freddie also infected capital markets and spread through every sector of our banking system. Before the bursting of the housing bubble, GSE securities constituted more than 150 percent of core capital for insured banks. More than 40 percent of money market mutual fund holdings were in the form of GSE securities. That is why Senator Chuck Hagel offered legislation for stronger regulation which passed the Senate Banking Committee on a party-line vote but was blocked by the Senate Democrats from coming to the floor. My amendment was also defeated.

The affordable housing goals were put in by the Democratic-controlled Congress. They mandated it in 1992. These affordable housing goals led the GSEs into the subprime and Alt-A market, and ultimately led to their collapse.

□ 1215

Former President Bill Clinton understands this epic blunder. He said, ''I think the responsibility that the Democrats have may rest more in resisting any efforts by Republicans in the Congress, or by me when I was President, to put some standards and tighten up a little on Fannie Mae and Freddie Mac.''

Let it be clear: This is the main reason why our economy is where it is today, and this is why we must reform the GSEs. Instead, the Democrats keep them in conservatorship, bail them out forever in their legislation. The Republicans, on the other hand, end bailouts, and the Republicans also reform the GSEs.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself 1 minute.

From 1995 through 2006, when the Republicans controlled this House and the Senate, they did no legislation on Fannie Mae and Freddie Mac. It was the Republicans who didn't do it. The Republican House in 2005 passed a bill which the Republican Senate and the Republican President opposed. The chairman of the committee, Mr. OXLEY, blamed them for doing it. In 2007, we did pass such a bill. And in 2004, it was President Bush unilaterally that pushed up substantially the affordable housing goals, including significantly for people under median income, which I opposed at the time.

Madam Chair, I yield 2 minutes to the gentleman from New York (Mr. MEEKS).

Mr. MEEKS of New York. Madam Chair, I rise in strong opposition to the Republican substitute. In fact, when you look at it, it's nowhere near H.R. 4173.

Let me tell you what H.R. 4173 does. It strengthens protections for consumers and updates the regulatory structure, brings transparency to the previously unregulated derivatives market, and ensures that no one would be permitted to survive simply because they're ''too big to fail.'' That's what 4173 does.

Now, we all agree that the financial industry is, in fact, the lifeblood of America's economy and is a global leader in size, innovation, and employment. And I believe it is essential to sustain this industry while making it accountable for its actions, and that is exactly what H.R. 4173 accomplishes. For the sake of restoring America's economy, we must restore a strong and accountable financial sector.

Therefore, I am against the Republican substitute and for H.R. 4173 because it will ensure that the financial industry will get back on solid footing and back to the business of lending to American families and industries, while guaranteeing that financial firms will bear the risks that they take without recourse to the taxpayer.

I support H.R. 4173 because of the impact the financial crisis has had on middle America. Our small businesses cannot access credit. Retirees are forced to go back to work because their pensions are depleted and they have upside-down mortgages. And in my community, we have an astronomical unemployment rate.

Finally, let me emphasize that these reforms that are in H.R. 4173 strengthen our system of capitalism and free enterprise.

To those who criticize this legislation as antimarkets, I would counter that this legislation is good for consumers and good for businesses because investors are staying out of the market right now and companies across the Nation are struggling to stay in business, let alone creating desperately needed jobs.

By strengthening protections for consumers and investors and bringing transparency and accountability to the marketplace, we are restoring the cornerstone of a healthy and sustainable economy of the free world.

Mr. BACHUS. Madam Chair, would you give the time remaining on each side.

The SPEAKER pro tempore. The gentleman from Alabama (Mr. BACHUS) has 11 minutes remaining, and the gentleman from Massachusetts (Mr. FRANK) has 9½ minutes remaining.

Mr. BACHUS. Madam Chair, I yield 30 seconds to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Madam Chair, again, in 1992, it was the Democrats that put in place the legislation that led Fannie Mae and Freddie Mac into the subprime and Alt-A loans. And every time there was an amendment up, and I remember specifically my amendment up on this House floor that tried to do what was requested by the Federal Reserve to stop the systemic risk, there was opposition to it.

Now, the legislation before us today, to compound this problem, exempts Fannie Mae and Freddie Mac again from this reform. And every time there was legislation that was actually backed by the Federal Reserve, the chairman opposed that legislation.

Mr. FRANK of Massachusetts. I yield myself 30 seconds.

I want to point out that the gentleman conveniently forgets to say that the opposition came from his own Republican leadership. Yes, he offered an amendment in 2005, the only time that the Republicans let a bill come up, and he was defeated with the overwhelming vote of the Republicans as well as the Democrats. I wanted some reform that preserved rental housing.

Finally, in 2007, we in the majority passed a bill that was recommended. And in 2004, President Bush—and, yes, the affordable goals came in 1992—President Bush raised them from 42 to 54 percent over my objection. I thought it was imprudent and said so at the time.

Madam Chair, I yield 3 minutes to the gentleman from Pennsylvania (Mr. KANJORSKI).

Mr. KANJORSKI. Madam Chair, before I address the merits of the Republican substitute, I want to note that I had hoped we could have achieved bipartisanship during this debate on regulatory reform. As such, I hosted about a dozen gatherings, inviting Members from both sides of the aisle to hear diverse viewpoints from some of the brightest economic minds and business leaders in the country. I was also pleased that three of the four capital markets legislative proposals in this bill, the Democratic bill, gained bipartisan support during markup.

The Republicans also incorporated one of those bills, to create the Federal Insurance Office, into their substitute. Ultimately, however, the Republicans opted against supporting strong reform of financial regulation. Their substitute is inadequate and seems designed to protect Wall Street rather than to reform it.

Regulation of hedge funds and private pools of capital is a very important piece of the Democratic bill. In committee, this provision passed 67–1, and yet the Republican substitute ignores this issue.

As the rating agencies were reformed, which many Republicans voted for in the committee markup, the GOP substitute does absolutely nothing to address the issue of liability. And without liability, the Republican plan provides no accountability for the rating agencies. Because the status quo is not an option, rating agency reform is an essential part of the Democratic plan.

The Republican plan also does little to improve investor protections. Just this week, the Capital Markets Subcommittee held a hearing on the largest Ponzi scheme in U.S. history. The colossal failure of the Securities and Exchange Commission to detect and investigate this massive fraud after numerous leads demonstrates that we need reform. And yet under the Republican alternative it appears that nothing ever happened.

We double the funding of the commission and push for comprehensive organizational reform. They give the agency very little and do little to change the agency.

The GOP plan additionally chooses bankruptcy for systemically significant firms. Well, Lehman Brothers went through bankruptcy and is still in bankruptcy, which resulted in credit markets freezing up around the world. This is not a real solution.

In sum, H.R. 4173 reforms Wall Street for the protection of the consumer and the investor on Main Street. The Republican alternative, in contrast, represents business as usual for Wall Street.

We don't need more of the same contained in their plan. We need substantial reform found in H.R. 4173. Vote ''no'' on the Republican substitute.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding.

Madam Chair, I rise in support of the Republican alternative.

It seems like every time we come down to debate this issue, we begin to focus on past history. History is good because we can learn from that, but I think we need to hear more about what the substantive issues are in this bill, what is happening, rather than to look at the past. We need to get it right, and I think the Republican alternative does that.

There's no question that we have a need to reform the financial industry, but for consumers, for the health of our financial services and the economy, we must get it right. But this bill isn't the answer. There are a few good bipartisan provisions in the underlying bill, but the good doesn't outweigh the bad.

America needs a financial recovery and reform bill, not a permanent Big Brother government bailout program. We need reforms that will facilitate competition in the marketplace and generate more choices for consumers. We need reform that will equip consumers with the information that they need to shop around and make the financial decisions that are best for their families.

We need a stronger regulatory regime to quickly expose, stop, and put behind bars any Wall Street crooks that break the law. And financial firms that fail should do just that: fail through a new, orderly bankruptcy process.

We also need greater transparency and improved regulation for over-the-counter derivatives. We must close the gaps in communication among regulators and give them the tools to be efficient and effective.

We need to get credit flowing again so that small businesses like those in my congressional district can get the financing to expand and create the jobs

that American families need so desperately.

That's responsible financial reform, and our Republican alternative aims to get us there.

Mr. FRANK of Massachusetts. Madam Chair, I reserve the balance of my time.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. I want to thank the ranking member, my good friend from Alabama, for yielding me the time. I would also like to thank him for his leadership on our committee over the past year.

I rise today in support of the Republican substitute.

My colleagues have a choice today: Do they want to perpetuate bailouts and continue to put taxpayers at risk or will they support the Republican substitute that ends bailouts?

There are two features of this bill I'm going to address.

The substitute creates a new chapter of the bankruptcy code. This new section, chapter 14, will allow for an expedient resolution of failing firms as there will be trained personnel who have the necessary skills to ensure an efficient resolution. This is not chapter 7 or chapter 11, as in the discussion we had in the committee, as my friends on the other side of the aisle have asserted; although, the bill does not prohibit a nonbank financial firm from pursuing these chapters if they so wish.

There is no taxpayer-funded bailout fund in our amendment. It is straightforward for all market participants. If you take on too much risk and fail, then you go through an expedited bankruptcy. The taxpayers will not pick up the tab. This is fair to all market participants and it's fair to the taxpayers, and I urge my colleagues to join us in ending the bailouts.

Another important section of the Republican substitute is that we address reforms to the GSEs, Fannie and Freddie. While there may not be consensus on the reforms proposed, this body must have an honest discussion about the future of these two entities and what role, if any, government should play. After all, a major component of the financial crisis was the failure of these two entities. To ignore their reform in a financial reform package is irresponsible.

I would urge support for the Republican substitute. This is the financial reform package that we need.

Mr. KANJORSKI. Madam Chair, I continue to reserve the balance of my time.

Mr. BACHUS. Madam Chair, I yield 2 minutes to the gentleman from Texas (Mr. HENSARLING).

Mr. HENSARLING. Madam Chair, the American people want more jobs and fewer bailouts. The Democratic majority will bring them fewer jobs and more bailouts. Their bill creates a permanent Wall Street bailout fund. The only reason to have a bailout fund is to bail people out.

The Republican bill says we're tired of the bailouts. No more bailouts. You cannot have a system where you privatize your profits and socialize your losses. That's what ''bailout nation'' is all about. The big get bigger, the small get smaller, the taxpayer gets poorer, and the economy becomes more political.

Jobs. The Democratic bill still believes that if we have an unelected czar who can ban credit products, who can ration credit products, that somehow we will have bliss in our economy. If you raise the price of capital, you get less capital. You cannot have capitalism without capital. Our small businesses are starving. We need more capital. This will simply cost the economy more jobs.

□ 1230

The Democratic bill fundamentally assaults the economic liberty of the American citizen. It says now you have to go on bended knee to Washington before you can put a credit card in your wallet or get a mortgage for your home. The Republican bill respects the liberties of the American citizen. It says we want to make sure that you have open and transparent information, but we respect your freedom, we respect your choices. We respect the freedom that this Nation represents.

Let's have more jobs, fewer bailouts. Let's respect the freedom of every American citizen. Reject the Democrats' bailout bill and support the Republican bill.

Mr. BACHUS. Madam Chairman, as I understand it, the chairman has one more speaker on his side so at this time I yield 2 minutes to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. Madam Chair, the American people have spoken loud and clear. They have spoken that they are opposed to more taxpayer-funded bailouts. The American people have said they are opposed to job-destroying legislation. The American people have said they are opposed to growing and expanding and increasing the size and spending of the Federal Government.

The majority bill that we had before us earlier is a bill that fails on all counts to listen to the American public. There is no one on the other side of the aisle who can deny that their bill will continue taxpayer-funded bailouts. There is no one on the other side of the aisle who can deny that their bill will continue the destruction of jobs in this country.

And, finally, there is no one on the other side of the aisle who can honestly deny that their bill will not create a more expensive, expanding government. Their bill will create bailouts, destroy jobs, and create a bigger government.

Earlier the majority leader was on the floor and he was speaking in an amusing if not illuminating manner when he used a football analogy when he talked about the refs on the field. Under their bill, we will end up with a stadium with only refs on the field, maybe highly paid and highly charged with authority, bureaucrats and refs, but no players. There will be no players in the game any more. And, quite frankly, the American public will not be able to pay the ticket to admission to the stadium under their legislation.

I also found it somewhat amusing that the only example of deregulation that the majority leader could think to was a piece of legislation that he actually voted for. And in fact that of course was not deregulation at all.

So we have presented now a Republican substitute, a Republican substitute that listens to the American people, that provides the appropriate level of regulation. The Republican substitute will actually end taxpayer-funded bailouts. The Republican substitute will actually do so by making sure the responsible parties pay. The Republican substitute will end job-destroying legislation and practices and instead create a facility that will expand liquidity and credit in the marketplace so that we can create new and expansive number of jobs in this country. The Republican substitute will end the practice of growing and expanding the government as we have seen time and time again. Instead, the Republican substitute will make sure that we have a government that lives within its means. I stand here in support of the Republican substitute.

Mr. BACHUS. Madam Chair, at this time I yield 2 minutes to the gentleman from Texas (Mr. NEUGEBAUER).

Mr. NEUGEBAUER. Madam Chairman, the Republican alternative actually brings real reform to the regulatory process and not big government. The first thing that the Republican alternative does is it ends bailouts. The American people are tired of bailouts; and particularly they are tired of bailouts when they come at their expense. The other thing that the Republican substitute does is it gets the government out of picking winners and losers. If companies make bad decisions, they fail. If they make good decisions, they succeed.

The other part of the Republican plan is we say, you know what, if you are taking risky behavior, you are involved in businesses that cause more risk to the system, you have to have more capital. The other thing that the Republican plan does is it actually protects consumers and doesn't limit their choices. I think that is the big difference in this piece of legislation; this piece of legislation that the Democrats want to do, they want somebody else to make the choices for you. They have a credit czar, and that credit czar is going to tell you what kind of car loan, what kinds of student loan, and what kind of house loan you can get. I have said all along that I think the American people have enough sense to make their own decisions.

In fact, I just recently came back from Afghanistan where we have young

men and women who are deployed, and they are over there trying to protect the American people's ability to make their own choices. I hope they are not going to be disappointed when they find out that back here in the good old U.S. of A., where they have been defending our freedom and liberty, we are over here trying to pass legislation that will limit their choices, limit their choices to be able to have the kind of house loan or car loan or student loan. Or maybe they want to come back from serving this great country and this great Nation after their distinguished service, they want a small business loan, only to find out that the United States Congress is limiting the ability of banks and credit unions to provide new business loans for these men and women. I don't think that is what they are fighting for.

I urge Members to vote for the Republican substitute and vote against the underlying bill.

Mr. BACHUS. Madam Chair, I would like unanimous consent at this time to recognize our troops who are in the gallery today.

The Acting CHAIR. Under clause 7 of rule XVII, the chair cannot entertain that request.

Mr. BACHUS. Madam Chair, at this time I yield the balance of my time to the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. Madam Chair, my colleagues, it has been quite a year. This House has been on a spending spree and a regulatory spree and a bailout spree that I could never have imagined in any of my prior 18 years here in Congress.

You know, it was a trillion-dollar spending plan, stimulus plan, that was supposed to be about creating jobs, and it turned into nothing more than a lot of big government spending; a budget that had trillion-dollar deficits on average for as far as the eye can see; and a trillion-dollar national energy tax that was going to create this giant bureaucracy and tax Americans over their gasoline, their electricity, and everything else that moves in America. Then we have the nearly trillion-dollar government takeover of our health care system. And people wonder why employers are frozen, why they are not hiring more employees when all of this is coming down the pike.

And if all of that wasn't bad enough, we have no idea what is going to happen to tax rates. There have been suggestions to increase taxes in many of the bills that have passed this House this year. And now we come to the granddaddy of all of them: the financial regulatory bill that is in front of us today.

All of us recognize there are shortcomings in our financial regulatory system; but I do believe that the overreach by my Democrat colleagues on this bill is really beyond imagination. It is going to have more bailouts for banks in this bill; nothing that will reform Fannie Mae and Freddie Mac, the real culprits at the beginning of this whole financial meltdown, but there is no reform in this bill when it comes to those two entities.

And if all of that isn't bad enough, to put more money in here to bail out bad actors is exactly what the American people don't want.

And so I rise in support of a commonsense regulatory approach offered by my Republican colleagues. I am going to congratulate SPENCER BACHUS and all of the members of his committee for the work they have done to put this commonsense alternative together that will fix the regulatory gaps that we have without bailouts, without tens of thousands of new Federal employees that we see in the underlying bill. I would hope that my colleagues would support it.

But if my colleagues don't support the alternative that is on the floor at this moment, when that vote comes, Republicans will offer a motion to recommit, a motion to recommit that will scrap the entire underlying bill. It will also say TARP ends on December 31 this year, and all of the funds that come back from TARP should be used to repay the Federal deficit. And, thirdly, we will bring down the debt limit commensurate with those repayments.

TARP was there for an emergency. Everyone involved in TARP over a year ago understood that when that money came back, it was to go back to the Treasury to reduce the Federal budget deficit. It wasn't to become a political slush fund that we have heard bandied about here over the last couple of weeks, all kinds of ideas about how to take TARP and use it for more bailouts and more spending from here in Washington.

And so I am going to ask my colleagues, if you've had enough of the bailouts, enough of TARP, let's do the right thing for the American people. They are already saying enough is enough. Let's end TARP, let's pay down the deficit, and if this substitute doesn't pass, you will have a chance to put an end to this entire process.

Mr. FRANK of Massachusetts. Madam Chair, I yield myself the balance of my time.

An example of the wildly excessive hyperbole that just came from the gentleman from New Jersey: increased regulation of derivatives; require overextended financial companies to have more capital; don't let people sell mortgages that will get people in trouble; and there will be no players on the field, there will be only refs. The cynical feeling that Republicans have toward regulation leads them to talk crazy.

My friend, the gentleman from Texas (Mr. NEUGEBAUER) said you will need permission to get a car loan. No sane person, including Mr. NEUGEBAUER, thinks that is true. As a matter of fact, over the objection of many of us, car loans are exempted from the bill he is widely exaggerating. So it is an inaccuracy built on an exaggeration.

What we have also is their great fear of not having in this bill the bailout that they want to attack. But before I get to that, let me take directly one of their arguments. The American people have said no more expansion of government. Not in the area certainly of financial regulation. Their view that the American people want no more restraints on Wall Street is wrong. Their view that the American people want nothing to be done about the form of executive compensation that is not only obscenely excessive, but destabilizing because of the way in which it is structured—so that is true, they do nothing effectively about executive compensation.

They say that the American people like derivatives to be spread out with no capital to back them up so when there are failures, you have trouble. And they carry through; they are right. I disagree vehemently that the American people think that the status quo with the financial industry was a good one.

One gentleman said, Well, you will increase the cost of capital. Yes, in some cases. I want to increase the cost of speculation. The problem with the way capital has been employed is it has been employed for useful purposes to gather up funds that could be used to produce goods and services; but for some, the means became the end. And yes, if we were to increase the cost of capital for some of the speculative trading that goes on, that would be a good thing. Less of that would be a good thing.

So let's put to the American people: Do you prefer the Republican position of doing literally nothing to rein in these abuses, or should we try to rein them in? And that leads to a difference in the bill. We are not simply in our bill saying let's deal with what happens when there is a failure. They say here in their bill, if there is a failure, let them go bankrupt and that's it.

We also say if there is an institution that is overextended, we let it fail and we have specific language that says no money can go to that institution or its shareholder or its board of directors. But unlike them, we don't think that you should wait until then. We don't think that it is responsible for society to say, Go ahead and fail; we don't care. We do care. We are not going to go to their aid the way it was done last year under section 13(3), which we have amended so it can't happen again, and you cannot have what the Bush administration did with 13(3) and the AIG. I don't think that they were wrong necessarily, but that is what they did. We stop that. But we think that you should step in and don't let them get to that point.

It is not healthy for society where you don't do anything about compensation, you don't do anything about derivatives, you don't regulate them at all, and you let them crash; but when they do crash, here is the argument: You have a permanent bailout fund.

□ 1245

Madam Chair, in their heads is the only place that permanent bailout fund exists. Well, maybe in their hearts, because it pains them to recognize that we have curtailed it.

Here's what the legislation actually says in a binding way and why their analogies to last year are so directly wrong.

Here is on page 397—I know it's a big bill, and maybe they couldn't get all the way through it. I apologize. We would have given them a reading guide if they had asked for it:

''There is established in the Treasury a separate fund to be known as the Systemic Dissolution Fund''—that's what they call the bailout fund—''to facilitate and provide for the orderly and complete dissolution of any failed financial company or companies that pose a systemic threat to the financial markets.'' And it pays the expenses of putting them out of business not from the taxpayers, but from an assessment on large financial companies; and that pains them.

They really do sympathize with Goldman Sachs, with JPMorgan Chase, with Morgan Stanley, with Bank of America, CitiCorp, yes, and hedge funds above $10 billion. We subject them to an assessment, and they say, Oh, we're so unfair. These wonderful, healthy companies, why should they have to pay for the bailouts? Because they have all been part of the system and they benefit from that safety net.

We go on to say, ''The Fund shall be available for use with respect to the dissolution of a covered financial company to cover the costs incurred by the receiver and to cover the costs of systematic stabilization actions. The Fund shall not be used in any manner to benefit any officer or director of such company.''

And it says earlier on when we talk about the establishment of that fund, on page 288, it can only be used, the money that comes from Morgan Stanley and Goldman Sachs and JPMorgan Chase, the objects of Republican sympathy. The poor dears; they won't have enough money to speculate and we won't have anybody to come and play football because they have been told not to speculate.

It says that they can only do this if such action is necessary for the purpose of financial stability and not for the purpose of preserving the covered financial company. And if there is a loan from taxpayers, it makes it very clear: Any funds from taxpayers shall be repaid—that's a loan—shall be repaid by a fixed assessment from these big companies; that the shareholders do not receive payment until other claims have been fully paid; and no payments are made to creditors until the taxpayers get their money back.

We ask that the substitute be rejected.

Mr. SMITH of Texas. Madam Chair, the Administration's and this Democratic majority's legislation is a massive, politically driven, government intervention in America's economic life.

Americans see this in the health care legislation that threatens government control over their lives. They see it in the cap-and-tax legislation that sacrifices the economy to the uncertain science of climate change. They see it in the Stimulus Bill and the federal budget that increases deficits and burdens our economy for generations.

And they see it in the legislation before us today.

This bill's giving so-called ''resolution authority'' to the federal government is a perfect example.

''Resolution authority'' is intended to address how to handle collapsing institutions that allegedly are ''too big to fail.'' Economists and legal experts point to the ''too big to fail'' mentality as the culprit that laid the groundwork for the September 2008 financial panic.

A key feature of the ''too big to fail'' approach is the provision of bailouts for failing firms. But bailouts only encourage risky behavior. If Congress authorizes the bail out of Wall Street every time a gamble doesn't pay off, what will deter bad business decisions in the future?

Rather than end billion dollar bailouts, today's legislation turns the ''too big to fail'' mentality into a cornerstone of Democrats' proposed reforms.

The bill gives special treatment to big firms; encourages risk; and gives government agencies the power to determine which firms live or die. In other words, the bill institutionalizes the mistakes that led to the 2008 financial collapse.

And consistent with the Democratic agenda, it empowers the federal government to intervene in the lives of our largest financial institutions.

The Republican substitute amendment rejects this big government ticket back to financial ruin. It slams the door shut on the bailout era and ''too big to fail.'' It renounces the power grab that lets federal agencies and government employees determine who lives and dies in our economy. It embraces the way the experts point to as the better path towards a healthier financial future.

With respect to failing financial institutions, the better way is bankruptcy reform.

The Republican substitute establishes a new chapter of the Bankruptcy Code to resolve failed non-bank financial institutions. It puts responsibility into the hands of non-partisan, transparent bankruptcy courts. It adds new provisions to help courts better handle these bankruptcies so that future crises may be better avoided.

The amendment creates one set of fair, predictable rules for all non-bank institutions. It rests on a long-standing body of precedent well understood by firms, investors, government and the public.

And the Republican substitute guarantees that not a single taxpayer dime will ever again be paid for a Wall Street bailout.

America's economy—and taxpayers' wallets—will not be safe until billion dollar bailouts and the notion that Wall Street firms are ''too big to fail'' rest in the dustbin of history.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Alabama (Mr. BACHUS), as modified by the order of the House of December 10, 2009.

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. BACHUS. Madam Chair, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Alabama will be postponed.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in House Report 111–370 on which further proceedings were postponed, in the following order:

Amendment No. 19 by Mr. MARSHALL of Georgia.

Amendment No. 32 by Ms. SCHAKOWSKY of Illinois.

Amendment No. 35 by Mr. MINNICK of Idaho.

Amendment No. 36 by Mr. BACHUS of Alabama.

The Chair will reduce to 5 minutes the time for the second and fourth vote in this series.

AMENDMENT NO. 19 OFFERED BY MR. MARSHALL

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Georgia (Mr. MARSHALL) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been requested.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 188, noes 241, not voting 11, as follows:

[Roll No. 963]

AYES—188

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|---|---|---|
| Abercrombie | Davis (AL) | Higgins |
| Ackerman | Davis (CA) | Himes |
| Adler (NJ) | Davis (IL) | Hinchey |
| Andrews | DeFazio | Hinojosa |
| Baca | DeGette | Hirono |
| Baird | Delahunt | Hodes |
| Barrow | DeLauro | Holt |
| Bean | Dicks | Honda |
| Becerra | Dingell | Hoyer |
| Berkley | Doggett | Inslee |
| Berman | Doyle | Israel |
| Bishop (NY) | Edwards (MD) | Jackson (IL) |
| Blumenauer | Ellison | Jackson-Lee (TX) |
| Brady (PA) | Engel | Johnson (GA) |
| Braley (IA) | Eshoo | Johnson, E. B. |
| Brown, Corrine | Etheridge | Jones |
| Butterfield | Faleomavaega | Kagen |
| Capps | Farr | Kanjorski |
| Capuano | Fattah | Kaptur |
| Cardoza | Filner | Kennedy |
| Carnahan | Foster | Kildee |
| Carson (IN) | Frank (MA) | Kilpatrick (MI) |
| Castor (FL) | Fudge | Kilroy |
| Christensen | Garamendi | Kirkpatrick (AZ) |
| Chu | Giffords | Klein (FL) |
| Clarke | Gonzalez | Kucinich |
| Clay | Grayson | Langevin |
| Cleaver | Green, Al | Larson (CT) |
| Clyburn | Green, Gene | Lee (CA) |
| Cohen | Grijalva | Levin |
| Conyers | Gutierrez | Lewis (GA) |
| Cooper | Hall (NY) | Loebsack |
| Courtney | Hare | Lowey |
| Crowley | Hastings (FL) | Luján |
| Cummings | Heinrich | |

Lynch
Maffei
Maloney
Markey (MA)
Marshall
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McNerney
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Pallone
Pascrell
Pastor (AZ)
Paul
Payne
Perlmutter
Peters
Pingree (ME)
Price (NC)
Rangel
Richardson
Ros-Lehtinen
Rothman (NJ)
Roybal-Allard
Ruppersberger
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schwartz
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Snyder
Speier
Stark
Sutton
Taylor
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Turner
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Woolsey
Wu
Yarmuth

NOES—241

Aderholt
Akin
Alexander
Altmire
Arcuri
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carney
Carter
Cassidy
Castle
Chaffetz
Chandler
Childers
Coble
Coffman (CO)
Cole
Conaway
Connolly (VA)
Costa
Costello
Crenshaw
Cuellar
Culberson
Dahlkemper
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, M.
Donnelly (IN)
Dreier
Driehaus
Duncan
Edwards (TX)
Ehlers
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harman
Harper
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Hill
Hoekstra
Holden
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kissell
Kline (MN)
Kosmas
Kratovil
Lamborn
Lance
Larsen (WA)
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lipinski
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Markey (CO)
Massa
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McMahon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Mollohan
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Nunes
Nye
Olson
Ortiz
Owens
Paulsen
Pence
Perriello
Peterson
Petri
Pitts
Platts
Poe (TX)
Polis (CO)
Pomeroy
Posey
Price (GA)
Putnam
Quigley
Radanovich
Rahall
Rehberg
Reichert
Reyes
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Roskam
Ross
Royce
Rush
Ryan (WI)
Scalise
Schmidt
Schock
Schrader
Scott (GA)
Sensenbrenner
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Space
Spratt
Stearns
Stupak
Sullivan
Tanner
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Upton
Walden
Walz
Wamp
Westmoreland
Whitfield
Wilson (OH)
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—11

Baldwin
Bordallo
Diaz-Balart, L.
Lofgren, Zoe
Moran (VA)
Murtha
Norton
Pierluisi
Sessions
Slaughter
Young (AK)

□ 1317

Messrs. COBLE, SULLIVAN, ROGERS of Alabama, LUETKEMEYER, KINGSTON, ALTMIRE, BURGESS, COSTELLO, COSTA and RUSH changed their vote from ''aye'' to ''no.''

Messrs. PAUL, BAIRD, GUTIERREZ, JOHNSON of Georgia, LYNCH, ACKERMAN, Ms. DEGETTE and Mrs. NAPOLITANO changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

(By unanimous consent, Mr. HOYER was allowed to speak out of order.)

WELCOMING OUR ARMED FORCES

Mr. HOYER. Ladies and gentlemen of the House, we here like to refer to ourselves as the House of the people, the ''People's House'' as Bill Natcher used to refer to it. We exercise what our Founding Fathers set up as a free democracy, where the people can speak through freely elected Representatives. And very frankly, we are that because we have brave men and women who are willing to serve us in the Armed Forces of the United States.

From time to time, they have an opportunity to visit with us. It is not, under the rules, appropriate to directly address people who are in our gallery, but it is always in order to pay honor to those who serve us and serve us so well.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Without objection, 5-minute voting will continue.

There was no objection.

AMENDMENT NO. 32 OFFERED BY MS. SCHAKOWSKY

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from Illinois (Ms. SCHAKOWSKY) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 277, noes 149, not voting 14, as follows:

[Roll No. 964]

AYES—277

Abercrombie
Ackerman
Adler (NJ)
Akin
Altmire
Andrews
Arcuri
Baca
Baird
Barrow
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Cao
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castle
Castor (FL)
Chandler
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Emerson
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Fortenberry
Foster
Frank (MA)
Fudge
Garamendi
Gerlach
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilroy
Kind
Kirk
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Lance
Langevin
Larsen (WA)
Larson (CT)
Latham
Lee (CA)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murphy, Tim
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Paulsen
Payne
Perlmutter
Perriello
Peters
Peterson
Petri
Pingree (ME)
Platts
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Reyes
Richardson
Rodriguez
Rogers (MI)
Ros-Lehtinen
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Smith (NJ)
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Upton
Van Hollen
Velázquez
Visclosky
Walz
Wamp
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—149

Aderholt
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Carter
Cassidy
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dreier
Duncan
Ehlers
Fallin
Flake
Fleming
Forbes
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kline (MN)
Lamborn
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Myrick
Neugebauer
Nunes
Olson
Paul
Pence
Pitts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Walden
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—14

Baldwin
Bordallo
Clyburn
Kilpatrick (MI)
Lofgren, Zoe
Moran (VA)
Murtha
Norton
Pierluisi
Rangel
Sessions
Slaughter
Waters
Young (AK)

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1327

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 35 OFFERED BY MR. MINNICK

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Idaho (Mr. MINNICK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 208, noes 223, not voting 10, as follows:

[Roll No. 965]

AYES—208

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boucher
Boustany
Boyd
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Chandler
Childers
Coble
Coffman (CO)
Cole
Conaway
Costa
Crenshaw
Cuellar
Culberson
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Kratovil
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Markey (CO)
Marshall
Massa
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Ortiz
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuler
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOES—223

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Bean
Becerra
Berkley
Berman
Bishop (NY)
Blumenauer
Boccieri
Boswell
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costello
Courtney
Crowley
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kosmas
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (MA)
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McMahon
McNerney
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Pelosi
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Sires
Smith (WA)
Snyder
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—10

Baldwin
Bordallo
Lofgren, Zoe
Moran (VA)
Murtha
Norton
Pierluisi
Sessions
Slaughter
Young (AK)

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining.

□ 1343

Mr. LINDER and Ms. MARKEY of Colorado changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 36, AS MODIFIED, OFFERED BY MR. BACHUS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Alabama (Mr. BACHUS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 175, noes 251, not voting 14, as follows:

[Roll No. 966]

AYES—175

Ackerman
Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOES—251

Abercrombie
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Calvert
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chandler
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Gallegly
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
McCarthy (NY)
McCollum
McDermott
McGovern
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, Gary
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Murphy (NY)
Murphy, Patrick
Nadler (NY)
Napolitano
Neal (MA)
Nye
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—14

Baldwin
Bordallo
Lofgren, Zoe
Matsui
McIntyre
Moran (VA)
Murphy (CT)
Murtha
Norton
Oberstar
Pierluisi
Sessions
Slaughter
Young (AK)

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining in this vote.

□ 1350

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. MCINTYRE. Madam Chair, during rollcall vote No. 966, I was unavoidably detained. Had I been present, I would have voted "no."

## PERSONAL EXPLANATION

Ms. BORDALLO. Madam Speaker, yesterday and today I have been granted an official leave of absence by the House of Representatives and am in my district attending to official business. As such, I am unable to cast my votes in the Committee of the Whole House on the State of the Union on amendments to H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009. If I was present for these votes, I would vote as follows and ask that the RECORD reflects these positions: "yes" on Mr. FRANK's amendment (rollcall vote 953); Mr. LYNCH's amendment (rollcall vote 955); Mr. MURPHY's amendment (rollcall vote 956); Mr. FRANK's amendment (rollcall vote 957); Mr. STUPAK's amendment (rollcall vote 958); Mr. STUPAK's amendment (rollcall vote 959); Mr. KANJORSKI's amendment (rollcall vote 960); Mr. PETER's amendment (rollcall vote 962); Mr. MARSHALL's amendment (rollcall vote 963); Ms. SCHAKOWSKY's amendment (rollcall vote 964); and "no" on Mr. SESSION's amendment (rollcall vote 954); Mr. MCCARTHY's amendment (rollcall vote 961); Mr. MINNICK's (rollcall vote 965); and Mr. BACHUS's amendment (rollcall vote 966).

The Acting CHAIR. There being no further amendments, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PASTOR of Arizona) having assumed the chair, Ms. EDWARDS of Maryland, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes, pursuant to House Resolution 964, she reported the bill, as amended pursuant to House Resolution 956, back to the House with sundry further amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Pursuant to House Resolution 964, the question on adoption of the amendments will be put en gros.

The question is on the amendments.

The amendments were agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. DENT. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DENT. In its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Dent moves to recommit the bill, H.R. 4173, to the Committee on Financial Services, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert the following:

**SEC. 1. REPEAL OF THE TROUBLED ASSET RELIEF PROGRAM.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the authorities provided under section 101(a) of the Emergency Economic Stabilization Act of 2008 (excluding section 101(a)(3)) and under section 102 of such Act shall terminate on December 31, 2009.

(b) RETURNED TARP MONEY TO BE USED FOR DEFICIT REDUCTION.—Notwithstanding any other provision of law, all assistance received under title I of the Emergency Economic Stabilization Act of 2008 that is repaid on or after the date of the enactment of this Act, along with any dividends, profits, or other funds paid to the Government based on such assistance on or after December 31, 2009, shall be deposited in the Treasury to reduce the deficit.

(c) LOWERING OF NATIONAL DEBT LIMIT TO CORRESPOND TO TARP REPAYMENTS.—Section 3101 of title 31, United States Code, is amended—

(1) in subsection (b), by inserting after the dollar limitation contained in such subsection the following: '', as such amount is reduced by the amount described under subsection (d)''; and

(2) by adding at the end the following new subsection:

''(d) The amount described under this subsection is the amount that equals the amount of all assistance received under title I of the Emergency Economic Stabilization Act of 2008 that is repaid on or after December 31, 2009, along with any dividends, profits, or other funds paid to the Government based on such assistance on or after December 31, 2009.''.

Mr. DENT (during the reading). I ask unanimous consent to dispense with the reading.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. DENT. Mr. Speaker, this motion to recommit will immediately end the Troubled Asset Relief Program, otherwise known as TARP, and require that all TARP funds that are repaid to the Treasury—including interest, dividends, the sale value of stock and the sale of warrants—be used to reduce our national burgeoning deficits. It will also reduce the debt limit by the same amount saved by ending TARP. I call this motion to recommit the ''troubled taxpayer relief program act'' because it takes an important step towards getting government out of the bailout business and curbing excessive Washington spending. TARP was originally enacted as a temporary plan to address an extraordinary crisis in our financial markets as a result of the collapse of financial firms that the government said were just ''too big to fail.'' Those who voted for the Emergency Economic Stabilization Act, which created TARP, did so with the assurance that the money would be returned to taxpayers. That was the assurance given at the time.

It is unfortunate that the President chose to extend the TARP program to October 3, 2010. In doing so, he has opened the door to efforts by Democrats in Congress to begin spending unallocated and repaid TARP funds for programs unrelated to the financial emergency. In fact, the underlying bill diverts $4 billion from TARP to a number of foreclosure mitigation and neighborhood stabilization programs. It also diverts a total of $23.625 billion to pay for the massive expansion of government bureaucracy that will result from the enactment of this legislation.

And just yesterday, we heard from Treasury Secretary Tim Geithner that the administration is developing an initiative to tackle our economic problems and unemployment by using TARP funds for small businesses. Elizabeth Warren, appointed to lead the panel that oversees the use of TARP funds, responded to the Secretary saying, ''It's not news to anyone that small business lending is important. Small businesses are closing every day. But Treasury has announced three plans and has not gotten the job done.''

The President has said that we need to ''spend our way out of this recession.'' The majority already tried that in passing the $787 billion stimulus. It has not worked. Now they want to spend more TARP money. Haven't we learned that if we want to create jobs and grow our economy, we must support the private sector and invest Federal dollars sparingly and wisely.

Unfortunately, this bill not only fails to end the TARP now that the emergency in the financial markets has abated, it also turns TARP into a revolving slush fund to pay for the majority's political, economic and social agenda. Failing to honor the original intent of TARP and repay the taxpayers is an irresponsible breach of trust that we are committed to stopping.

Americans are struggling under the weight of high unemployment, sluggish economic growth and unsustainable Federal deficits. This Congress has piled on with a so-called stimulus bill that borrows too much, spends too much and delivers too few jobs, and a budget that doubles the national debt in 5 years and triples it in 10 years. They are piling on with a misguided national energy tax called cap-and-trade that will cost thousands of jobs in my State of Pennsylvania and increase energy costs for families and businesses alike; an undemocratic card check bill that will deny secret ballots and impose binding arbitration; and a controversial health care bill that imperils innovation, raises taxes, cuts Medicare and endangers jobs.

Now they are piling on with this 1,300-page bill that keeps taxpayers on the hook for permanent bailouts, allows unelected bureaucrats to pick winners and losers in our economy and adds an array of new job-killing taxes and mandates on consumers, investors and small businesses.

Raiding TARP to fund more government programs that don't create jobs verges on the reckless. The best way to bring about economic growth and job creation is to avoid the massive deficits and to lessen the massive increase in the national debt. These misguided policies, advanced by the majority, are a road to higher inflation and record tax increases. Today, we can begin the process of putting our fiscal house in order, and inspiring confidence in the private sector, by shutting down TARP, returning the unused funds to the taxpayers, and lowering the national debt limit.

At this time I would like to yield the balance of my time to Mr. HENSARLING of Texas.

The SPEAKER pro tempore. The gentleman from Texas will be recognized for 30 seconds.

Mr. HENSARLING. Mr. Speaker, TARP was passed as emergency legislation to bring about financial stability. TARP has morphed into a $700 billion revolving bailout fund to advance the administration's political, social and economic agenda. TARP has helped bring about our Nation's first trillion-dollar deficit, the highest unemployment rate in a generation, and helped turn us into a bailout nation. The American people want more jobs, not more bailouts and, oh, they want their money back, and they want their nation back.

It's time to terminate TARP.

The SPEAKER pro tempore. The time of the gentleman has expired.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded not to traffic the well while another is under recognition.

Mr. FRANK of Massachusetts. I rise to speak in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. FRANK of Massachusetts. First, for those who might have believed that when the Republicans supported the Minnick amendment, or when they offered a substitute, that they said that was a better way to regulate, for those who might have believed that somebody meant that, here's the proof that it was all a sham.

The Republicans have the right to offer a recommit motion. They could have put anything they wanted in it. Here's what it says about consumer protection of our Minnick or about their way of dealing with other issues: ''Strike all after the enacting cause.''

The Republican motion now embodies their approach to protecting consumers and regulating derivatives and restricting leverage and letting companies go out of business. It consists of ''strike all after the enacting clause.'' They could have taken the Minnick amendment and made it part of the recommit. They could have taken their substitute and made it part of the recommit.

What the recommit does, what the gentleman from Pennsylvania I think forgot to mention, I understand there is a lot of pressure when you are reading the script here, but he forgot to mention that the recommit motion kills all regulatory reform—dead; gone. There's no regulatory reform.

□ 1400

I see my friend from Texas there. He's kind of rubbing his head. His

amendment is gone. There's no Paul amendment. If they wanted to help Mr. PAUL and they wanted to look into the Fed, why isn't that in here? ''Strike all after the enacting clause,'' that's what Mr. PAUL gets from them.

So let's be clear that it is, first of all, a cover. They use anger over the TARP to frankly make sure we'll need another one because they kill all regulation.

Secondly, even as to the TARP, here's my difference: The minority leader came to the well and said TARP was passed to be an emergency bill and the emergency is over. You cannot directly address a Member, so let me say, Mr. Speaker, will someone tell the minority leader it ain't over until it's over on Main Street all throughout America. Maybe when the Republicans had that meeting with a group of financial lobbyists, they took some time out to celebrate the ending of an emergency, but most of us know the emergency is not over. I didn't say ''ain't'' again. The emergency continues.

And here's what the administration has proposed: Under the Bush administration—and I voted for TARP. I thought that the lack of regulation created a crisis. But the big banks got the first TARP money. We are now finally succeeding in getting TARP money for smaller banks who can do community lending and small business lending. We voted today to take $3 billion and give it as loans to people who can't pay their mortgages because they're unemployed. Not people who got mortgages they shouldn't have gotten. Not subprime mortgages. Hardworking people who can't pay a mortgage. The $3 billion would go for that to help them avoid foreclosure, and they can pay it back when they get the job. That's gone. So the antisocial parts of TARP are okay and now they want to get rid of the other parts.

By the way, who are they saving money for here? Their friends, the big banks. The original TARP legislation said at the end of the day, any TARP shortfall will be made up by an assessment on the financial community. We've gone further than that. The amendment we adopted, over Republican opposition, by the gentleman from Michigan (Mr. PETERS) instructs the FDIC, in this bill that they want to kill, not surprisingly, to assess the financial institutions to make up any shortfall from the TARP. They kill that. They complained before about our assessment. They are very upset that we might levy on JPMorgan Chase and Morgan Stanley and Goldman Sachs and the others some responsibility financially for what's gone on.

So here's what they do: First of all, they kill all reform, and their pretense that they are for a different form of it, they deliberately left it out of their bill. They were just playing it.

They, secondly, say now that TARP money has gone to the big banks—and they don't have to pay it back, by the way, under this bill necessarily—and we are trying to use it socially to encourage lending, to give it to community banks with some requirement they lend to help people who are unemployed avoid having foreclosure until they get their jobs back. Now they want to get rid of it, and to whose benefit? The big banks.

The question is, should we use TARP money to give to the small banks for community banking? Should we use TARP money to help people avoid unemployment? Or should we do what they want to do and give it back so that the big financial institutions aren't assessed? That's what's at risk here. Not the taxpayers. The taxpayers are not on the hook for this TARP money. The large financial institutions are.

And I know what they say: It will be a restriction in capital. Well, I think capital's a good thing. But to the extent that capital was misused for speculation, that it was misused for unleveraged credit default swaps, then a little reining in is a good thing.

But, once again, here's what you have: a bill, a motion, that says let's not do anything to change the financial system. Let's let companies go bankrupt and not worry about them. Let's not have anything about derivatives. Let's just do nothing and instead let's save the big banks from having to pay their fair share when the TARP is repaid.

Mr. STEARNS. Mr. Speaker, our current financial crisis, which is now global in scope, was triggered by the bursting of the U.S. housing bubble and particularly by the deteriorating quality of subprime mortgages that were bundled into toxic securities and sold all over the country and around the world. It was the housing crisis and mortgage meltdown that led us to the worst financial crisis our country has faced since the Great Depression.

In examining the root causes of the housing crisis, particularly the policies that led to the creation of the housing bubble that would inevitably burst at the seams, it is important to focus on the facts instead of the partisan blame game that often ensues here on our House floor.

To be fair, blame can be placed on both Democrats and Republicans for either supporting or simply going along with some of the bad housing policies that led to the implosion of government sponsored enterprises, GSEs, Fannie Mae and Freddie Mac and the subsequent collapse of our housing market. Democrats blame 8 years of inaction and deregulation by the Bush Administration, and Republicans blame the vigorous enforcement of the Community Reinvestment Act and the affordable housing mandate placed on Fannie Mae and Freddie Mac by Democrats.

However, one of the most ardent critics of the Bush Administration and Republican policies in general is the Chairman of the House Financial Services Committee, Representative BARNEY FRANK. Mr. FRANK has spent two days this week on the House floor blaming Republicans and President Bush for the recession and for every problem our economy is currently facing, including the mortgage meltdown.

However, in examining the causes of the mortgage meltdown and ensuing financial crisis, it is worthwhile to take a look at the facts and what has actually been said and advocated by certain members of this House. Given Representative FRANK's leading role in harshly criticizing Republican policies, we must do our due diligence and recall Mr. FRANK's role as a member and Chairman of the House Financial Services Committee and an advocate and supporter of failed GSEs Fannie Mae and Freddie Mac.

Mr. Speaker, here are some interesting facts.

In 2000, Representative FRANK stated that Republican concerns about the stability of government sponsored enterprises Fannie Mae and Freddie Mac were ''overblown'' and that there was ''no federal liability there whatsoever.''

Two years later, Mr. FRANK went even further stating, ''I do not regard Fannie Mae and Freddie Mac as problems. I regard them as great assets.''

Looking back, these statements are nothing short of ironic. In 2007, Mr. FRANK became Chairman of Financial Services and he apparently changed his rhetoric, arguing that he had long been in favor of reforming Fannie and Freddie and blamed the lack of reform on Republicans and President George W. Bush.

This isn't a fair argument, Mr. Speaker.

Democrats in general have been longstanding and ardent defenders of out-of-control GSEs Fannie Mae and Freddie Mac, whose liberal mortgage lending policies and flawed structure of privatized gains and socialized losses greatly contributed to our current housing crisis and subsequent economic crisis.

Last year, American taxpayers were forced to bailout Fannie Mae and Freddie Mac to the tune of almost $200 billion and are on the hook for the GSEs $5.4 trillion in debt and other liabilities. Let us recall that it was Chairman FRANK who encouraged Fannie and Freddie to guarantee more ''affordable'' mortgages, which we all now know led to the mortgage market being inundated with dangerous subprime and Alt-A loans.

The Democrats also pushed for an increase in the conforming-loan limits in order to allow Fannie and Freddie to guarantee and securitize larger mortgages, and Democrats pressured regulators to ease up on their more stringent requirements for capital. All of these factors contributed to the bursting of the housing bubble.

The Democrats also played an additional role in pushing the risky housing policies that led to the housing crisis. The Federal Housing Enterprises Financial Safety and Soundness Act of 1992, also known as the GSE Act, contained an ''affordable housing'' requirement which is what ultimately led Fannie and Freddie to acquiring over $5 trillion in home loans over a 16-year period. Let's recall that in 1992, Democrats were in control of both the House and Senate, and the GSE Act was a Democratic priority.

Aggressive enforcement of the Community Reinvestment Act, CRA, of 1977, created under a Democrat Congress and President, was also a major contributing factor of the mortgage meltdown and ensuing financial crisis. From 1977 to 1991, the CRA was responsible for $9 billion in local lending commitments, and following the implementation of the Democrat's ''affordable housing'' mandate, CRA lending skyrocketed. In 2001, the director

of the federal Office of Thrift Supervision candidly said, ''Our record home ownership rate, I'm convinced, would not have been reached without CRA and its close relative, the Fannie/Freddie requirements.''

So Mr. Speaker, it is clear that aggressive enforcement of Community Reinvestment Act as long advocated by the Democrats, coupled with the Democrat's affordable housing mandate on Fannie Mae and Freddie Mac certainly played a major role in fueling the housing bubble. These are facts.

Additionally, between 1993 and 2007, just before the near collapse of Fannie and Freddie, the government-backed GSEs acquired $1.2 trillion of loans from banks and other lenders, and from 1997 to 2007, Fannie and Freddie acquired $2.2 trillion in subprime loans and securities backed by toxic subprime loans. Altogether, 50 percent of the GSEs high-risk loans are estimated to be Community Reinvestment Act loans.

The Democratic Party has been the torchbearer of the Community Reinvestment Act and the affordable housing mandate on Fannie Mae and Freddie Mac, which led to our housing crisis.

Today, the House of Representatives will take a vote on a broad financial regulatory reform bill sponsored by Chairman BARNEY FRANK. This bill seeks to change almost every aspect of our economy and financial markets, and yet ironically it does nothing to reform Fannie Mae and Freddie Mac, which were placed into government conservatorship last year and are being propped up by American taxpayer dollars.

Unfortunately, the Frank financial regulatory reform bill perpetuates the failed policies of the past and fundamentally restructures the Nation's free market system, placing it firmly in the hands of big government. This legislation will expose taxpayers to further exploitation by making permanent the policies used to bailout politically connected firms like Fannie Mae, Freddie Mac and AIG, while restricting access to credit and increasing the costs of credit products used by small businesses on main street.

The Frank legislation expands the powers of the very agencies that failed to catch the problems that created the financial crisis and rewards a Federal Reserve that pursued irresponsible credit policies and that ineffectively conducted its regulatory supervision. This bill also blunts market discipline through government guarantees that protect creditors against loss and authorizes the taxation of business without the approval of Congress.

The Republican Substitute to Mr. FRANK's bill phases out taxpayer subsidies of Fannie Mae and Freddie Mac over a number of years and ends the current model of privatized profits and socialized losses. I have long advocated winding down and privatizing Fannie and Freddie, and I am proud to support these reforms.

Additionally, the Republican Financial Regulatory Reform Plan puts an end to the TARP program and prevents future bailouts of financial institutions by creating a new chapter in the bankruptcy code for non-bank financial institutions. This protects taxpayers from covering the greed and excesses of failing firms. The Republican alternative also increases civil and criminal penalties for fraud, establishes a council to issue uniformed consumer protection rules, and reforms the over- the-counter derivatives markets.

Given Mr. FRANK's harsh and constant criticism of Republican policies and his eagerness to blame the Bush Administration for the financial and housing crises, I find it shocking that his financial regulatory reform bill contains no reform of GSEs Fannie Mae and Freddie Mac—the entities that are at the epicenter of the Nation's financial crisis.

While BARNEY FRANK and the Democrats regard Fannie and Freddie as great assets, Republicans regard them as great liabilities, and today we are on record supporting much needed reforms to these troubled government entities while also supporting commonsense reforms to our financial system.

Mr. Speaker, facts always speak louder than a partisan blame game. I wanted to share these comments with my colleagues in reply to those critics who want to shift the blame for political reasons.

The SPEAKER pro tempore. The time of the gentleman from Massachusetts has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. DENT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 8 and clause 9 of rule XX, this 15-minute vote on the motion to recommit will be followed by 5-minute votes on passage of the bill, if ordered, and agreeing to the Speaker's approval of the Journal, if ordered.

The vote was taken by electronic device, and there were—ayes 190, noes 232, not voting 12, as follows:

[Roll No. 967]

AYES—190

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Capito
Carter
Cassidy
Castle
Chaffetz
Chandler
Childers
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Kosmas
Kratovil
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Massa
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McMorris Rodgers
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Moran (KS)
Murphy, Tim
Neugebauer
Nunes
Nye
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Rodriguez
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOES—232

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boccieri
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Smith (WA)
Snyder
Space
Speier

Spratt
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—12

Baldwin
Cao
Lofgren, Zoe
Mica
Moran (VA)
Myrick
Oberstar
Sessions
Slaughter
Souder
Weiner
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining.

□ 1420

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. MICA. Mr. Speaker, on rollcall No. 967 I was unavoidably detained. Had I been present, I would have voted "aye."

Ms. MYRICK. Mr. Speaker, I was unable to participate in the following vote. If I had been present, I would have voted as follows: Rollcall vote 967, On Motion to Recommit with Instructions—H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009—I would have voted "aye."

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. BACHUS. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 223, noes 202, not voting 9, as follows:

[Roll No. 968]

AYES—223

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Barrow
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boswell
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kosmas
Kratovil
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lowey
Luján
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mollohan
Moore (KS)
Moore (WI)
Murphy (CT)
Murphy (NY)
Murphy, Patrick
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Obey
Olver
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Reyes
Richardson
Rodriguez
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Smith (WA)
Snyder
Speier
Spratt
Stark
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—202

Aderholt
Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boucher
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Carter
Cassidy
Castle
Chaffetz
Chandler
Coble
Coffman (CO)
Cole
Conaway
Crenshaw
Cuellar
Culberson
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Edwards (TX)
Ehlers
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hill
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
Kaptur
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Kucinich
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Massa
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McIntyre
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Ortiz
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Schrader
Sensenbrenner
Shadegg
Shimkus
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Stupak
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Visclosky
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (FL)

NOT VOTING—9

Baldwin
Lofgren, Zoe
Lynch
Moran (VA)
Oberstar
Rangel
Sessions
Slaughter
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Two minutes remain in the vote.

□ 1428

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

## PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unavoidably detained and missed rollcall vote Nos. 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, and 968. Had I been present, I would have voted "aye" on rollcall vote Nos. 953, 955, 957, 958, 959, 960, 962, 963, 964 and 968, and "nay" on rollcall vote Nos. 954, 956, 961, 965, 966 and 967.

## PERSONAL EXPLANATION

Mr. SESSIONS. Mr. Speaker, due to unexpected circumstances, I am speaking at the funeral of a family friend back in my district today. As a result, I am unable to vote on the remaining Floor proceedings for the Wall Street Reform and Consumer Protection Act of 2009 (H.R. 4173). In order to fully clarify my positions on the votes I will miss, I would have voted as follows: Kanjorski Amendment No. 51: "no"; McCarthy Amendment No. 168: "aye"; Peters Amendment No. 22: "no"; Conyers/Marshall Amendment No. 201: "no"; Schakowsky Amendment No. 209: "no"; Minnick Amendment No. 88: "aye"; Bachus Amendment No. 87: "aye"; Motion to Recommit: "aye"; Final Passage of H.R. 4173; "no".

## THE JOURNAL

The SPEAKER pro tempore (Mr. TONKO). Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, which the Chair will put de novo.

The question is on the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

□ 1430

## PERSONAL EXPLANATION

Mr. RANGEL. Mr. Speaker, on rollcall No. 968, I want to make it clear,

had I been here, I would have voted in the affirmative.

## APPOINTING THE DAY FOR THE CONVENING OF THE SECOND SESSION OF THE 111TH CONGRESS

Mr. HOYER. Mr. Speaker, I send to the desk a joint resolution and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

The text of the joint resolution is as follows:

H.J. RES. 62

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the second regular session of the One Hundred Eleventh Congress shall begin at noon on Tuesday, January 5, 2010.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

## LEGISLATIVE PROGRAM

(Mr. CANTOR asked and was given permission to address the House for 1 minute.)

Mr. CANTOR. I yield to the gentleman from Maryland (Mr. HOYER), the majority leader, for the purposes of announcing next week's schedule.

Mr. HOYER. I thank my friend for yielding.

Mr. Speaker, on Monday, the House will meet at 12:30 a.m. for morning-hour debate and 2 p.m. for legislative business, with votes postponed until 6:30 p.m. On Tuesday, the House will meet at 9 a.m. for morning-hour debate and 10 a.m. for legislative business. On Wednesday and Thursday, the House will meet at 10 a.m. for legislative business. On Friday, the House will meet at 9 a.m. for legislative business.

We will consider several bills under suspension of the rules, the complete list of which will be announced by the close of business today.

In addition, Mr. Speaker, we will consider further action on H.R. 3326, the Department of Defense Appropriations Act of 2010.

Mr. CANTOR. I thank the gentleman.

And Mr. Speaker, I'd like to ask the gentleman about the schedule for the rest of this year. Obviously many, many Members are asking the question as to when we will be able to return to our districts. Many have plans for the Christmas holiday.

So I would ask the gentleman, does he expect the House to adjourn for the year by Friday next week, December 18?

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

That is my hope. It may not be my expectation. It is my hope, and it is my plan, but obviously, as the gentleman well knows, having been in this position in the past, that is somewhat contingent upon what our colleagues in the other body do. But it is my intention, and I have announced that December 18 is the last day on which we are planning to meet. I very much want Members to be able to be home Christmas week. But as the gentleman knows as well as I do, that is dependent upon what our colleagues across the Capitol do.

Clearly, we have now passed most of our appropriations bills except for the Defense bill, so we've funded most of government. The Senate still has to enact, of course, the omnibus that we sent to them 2 days ago, which has six of the appropriations bills in it. One remains. So that if they pass that, 11 out of the 12 would have been passed. But obviously, we want to make sure that we pass our Defense bill as well.

Mr. CANTOR. Mr. Speaker, the gentleman speaks a lot about the appropriations factor, and I assume that means when we would actually bring up the Defense appropriations bill, but specifically, Mr. Speaker, I would ask the gentleman whether it is his hope that we will be considering health care in this House, or whether we could expect that to fall off into next year.

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

As is true of almost all pieces of legislation that are pending, that will depend upon Senate action. And until such time as we know what the Senate is going to do, it's almost impossible for me to say with any clarity and assurance that we are going to be able to take up health care or any other piece of legislation because, obviously, the Senate action will be essential for that to happen.

Again, with respect to the Defense appropriation bill, it is essential that we pass that bill. It's essential that we pass the debt limit. It's essential that we extend, in my opinion, unemployment insurance and COBRA. It's essential that we extend the Patriot Act for at least 90 days while the legislative committees are trying to complete that. So there are a number of things, clearly, that I think it's necessary for us to do because of the time limits. But as my friend knows, health care does not have a time limit and will depend upon what action the Senate takes and when it takes it.

Mr. CANTOR. I thank the gentleman, Mr. Speaker, and would ask about the Speaker's planned codel to Copenhagen. I'm aware, I think correctly, that there are about 30 Members that will be going with the Speaker to Copenhagen, scheduled to depart Wednesday evening next week, and would like to ask whether that will impact our schedule for work next week or does he expect that we will be in for 5 days with the Speaker and the codel gone?

And I yield.

Mr. HOYER. I don't know that the Speaker and the codel are going to be gone if, in fact, we have business to do.

I think you're probably scheduled to be on that codel. I know I am. But we're going to be here working if we have work to do to complete our business. And I will be here.

The fact is, as you know, the Copenhagen conference ends I think on December 19 or maybe December 18. The Speaker had contemplated taking a delegation to that conference—which we think is extraordinarily important—but that will be contingent upon what our schedule looks like for December 17 and 18 and what we've done and accomplished by the evening of December 16.

Mr. CANTOR. I thank the gentleman.

The gentleman did, Mr. Speaker, mention one of the things that needs to be addressed, the debt limit, and I believe, if I heard correctly, the gentleman said that he felt we needed to do that prior to year's end.

That has created a lot of concern. A lot of reports in the press have indicated that perhaps the administration is looking for ways that we could avoid doing that. Obviously given the size of the expected increase of the debt limit to nearly $2 trillion, a lot of Americans are wondering how in the world we keep spending money we don't have.

So I would ask again, does the gentleman believe that that comes to the floor next week?

And I yield.

Mr. HOYER. I thank the gentleman for yielding.

I think to the extent the Americans are considering that, they are considering that, for the bulk of this decade, I would say, we were spending money that we didn't have on a regular basis at very high levels, which is why we went from the $5.6 trillion surplus to the $10 trillion deficit.

Having said that, we have passed a debt extension, as the gentleman knows, and that debt extension is in the control of the United States Senate. They can take that off the table and pass that debt extension. So while it needs to be passed, we have done our work here. The Senate has that debt extension.

I can't imagine there are any of us that don't want the United States of America, as we would expect of all of ourselves and of others, to pay its debts that it has incurred.

But it could be accomplished in a number of ways, and the Senate has a debt extension bill, and if we don't act further on that, they can take that up off the floor or the desk and pass it. That is one option available. The other option the gentleman refers to is doing a new debt extension at a larger number, and that decision has not yet been made.

But I want to emphasize the Senate has on its desk a debt extension that will make sure that the United States of America pays the bills that it has incurred.

Mr. CANTOR. I thank the gentleman, Mr. Speaker.

Mr. Speaker, the gentleman and I were both in attendance at a meeting at the White House this week where we Republicans presented a plan to the President to suggest that there are ways that we could work together, without costing the taxpayers, to try and get America back to work. It has been labeled a No Cost Jobs Plan.

And as the gentleman knows, Mr. Speaker, I had suggested last week that perhaps we could work on some of those measures together. I know that the gentleman just told us, Mr. Speaker, that we may be able to expect certain things like COBRA, UI extension, and others that he believes, I imagine, would be part of a stimulus effort, and we wonder whether we could expect any of the items that we presented as Republicans to the majority, we could expect any of the items that we presented in that No Cost Jobs Plan, to also be a part of perhaps of what may come to the floor next week?

I yield.

Mr. HOYER. I thank the gentleman for yielding.

First of all, let me say with respect to COBRA and unemployment insurance, I wouldn't call that a stimulus plan; I would call that a tourniquet plan to try to stop the bleeding of some people who have been badly damaged by the extraordinary depths to which this economy fell starting in December of 2007, leading to unemployment in the last month of the last administration of 741,000 jobs lost.

As the gentleman knows, this past month we had only 11,000 jobs lost. That's significant progress but not success until we get into creating jobs.

We clearly believe that one of the important things that we want to do before we leave here is a jobs bill. A stimulus tends to be viewed as a more broadly-based piece of legislation. We've done a lot of that, as the gentleman knows, with his vote sometimes and without his vote sometimes, over the last 12 months.

The fact is that we want to address trying to create more jobs, get our economy going, make lending available for small businesses, expand our infrastructure—which is a direct not only creation of jobs but addressing infrastructure—roads, bridges, highways—as well as sewer and water systems critical to our economy, critical to the health and welfare of our people.

So we're looking at that as we speak, and we're trying to put together a package that the Senate may agree to and that we could pass before we leave here.

With respect to the No Cost Jobs proposal, as I said at the White House with you, I would be glad to discuss it, and I do look forward to discussing it with you. We can discuss it further this afternoon, some of the proposals that you have. I will tell you though, my friend, I have found very few things in life which are free.

□ 1445

If we are going to create jobs, if we are going to expand our economy, to pretend to the American public that it's free, just as your tax cuts were not free—any tax cuts are not for free. It sounds like it, but then there are consequences. And we believe that, for instance, the TARP funds that your motion to recommit sought to eliminate were essentially, while targeted at the time, really were for the purpose, you and I both voted for them when they were adopted, initially, they were for the purpose of trying to bring our economy from the depths to which it had fallen, preclude it from falling off the cliff and to bring our economy back.

I would suggest to you that one of the reasons we don't want to see these funds eliminated after they have helped the banks is we want us to use some of those funds to help Main Street, small business and job creation.

So, with respect to jobs, we are very focused on jobs. We look forward to working with you on that effort and your side of the aisle and suggestions that you have. And if we can reach consensus, I think the American people will be very pleased.

Mr. CANTOR. Well, Mr. Speaker, I will respond to the gentleman and say that I was, first of all, heartened by the fact that when we did come into the meeting with the President at the White House that he actually had a copy already of our Republican No Cost Jobs Plan. And I took that as a positive sign that perhaps we could actually work together in doing some things that don't cost anything.

And I would say to the gentleman, his comment that nothing is for free, there are some things that we could do together that don't cost anything that will, I think, produce jobs and most people agree they could produce jobs. And some of those being—and we told the President we would respond, and I would share that with the gentleman, also—there are a host of rules and regulations being promulgated by this administration and its agencies that frankly harm job creation. Those are the kinds of things we could stop right now if we are going to put jobs first and make sure we do everything we can to get Americans back to work.

As for the TARP funds themselves, Mr. Speaker, my recollection, we voted for that authorization of money in order to stave off a collapse in our capital markets. Most were in agreement that we were on the edge of an abyss and something needed to be done, and so we took the action. Within the proscription of that statute was the definition, or perhaps the mission, of those funds. Those funds were there to make sure our capital markets didn't collapse.

Now, all of us want to be able to say we're doing things to get people back to work. But I think what the American people are growing tired of is Congress saying that it is spending money for one purpose and then all of a sudden deciding, whoops, there's another need out there; let me then go, when we get this back into the Treasury, spend it somewhere else.

So, Mr. Speaker, the reason why our motion to recommit was crafted the way it was was because we feel very strongly in the emergency nature of the TARP program, and in the statute we called for the return of those moneys to the general fund, essentially to the taxpayers, and not to go and spend the money again, because it's borrowed in the first place. So I would say to the gentleman, we look forward to doing some things that don't cost anything to create jobs.

Some of the discussion at the White House centered on trade. We have three pending free trade agreements. If I recall correctly, the President indicated his support for those agreements, because all of us know those agreements will increase exports from this country. I believe, if I'm correct, that the leader himself, the gentleman from Maryland, did say, Mr. Speaker, that he would like to see those exports increased and perhaps those bills taken care of. Do you know what, Mr. Speaker? If we're serious about it, why don't we do that next week? We could leave before the Christmas holiday, and most people would say that by passing those bills, we could be on the path to creating 250,000 new jobs in this country.

I yield.

Mr. HOYER. I thank the gentleman for yielding.

Very frankly, he says most people believe that. The polls don't reflect that. A lot of Members on both sides don't believe that. And that's why these bills are controversial on your side and on my side. I think longer term that is the fact. We have people, however, who are having a challenge feeding their families, keeping their homes and paying their bills right now as we speak. It's not free for them. They need help.

On our side of the aisle, we think we need to give them help. Yes, we gave help to the banks. Yes, it stabilized them. I voted for that. You voted for that. I think it was the right thing to do. But those moneys, however, were to stabilize the economy. Now, they were targeted on banks, which were the immediate problem. There are an awful lot of my constituents and a lot of people around the country saying, Hey, you can help the banks, but guess what? I'm not there. My family is not there. My small business is not there. I need help.

Our proposition, under those circumstances, is, yes, the good news is, we didn't have to use all the money that President Bush asked for. President Bush used about half of it before he left. President Obama has used about half of it for the purposes intended. We also used some of it, as you know, for General Motors. That wasn't in the bill. But President Bush decided those funds ought to be used for that purpose, and Chrysler as well, to stabilize the automobile industry.

Now, I will tell my friend with respect to our discussions at the White House, and I understand we have a difference of agreement. We differ fundamentally on how to get this economy moving. Your party voted to a person against the economic package that we had in 1993, and we voted pretty much to a person, not unanimously, against your plan. I think the plan in 1990 worked. I think the plan in 2001 and 2003 didn't work. And I think statistically that is irrefutable. And we fell, as a result of a plan you supported, into the worst recession we've had in three-quarters of a century.

What we are saying is we need to take some of that money, we need to make sure that Main Street, bank lending to small business so they can stay in business and create jobs is a good use of those funds, because we are not done yet. Your leader, Mr. BOEHNER, said on this floor, it was over, the recession is over. I think what he meant was, correctly, that the economists say essentially we have bottomed out and we are coming up.

I suggest to you we bottomed out because we not only passed a bill that you and I voted for, but we passed a bill that you didn't vote for, and that is the Recovery and Reinvestment Act. Since that time, we have created 600,000 to 1.4 million jobs. According to the CBO, the gross domestic product for the first time since the third quarter 2008 has grown, actually 2007, has grown to where it was the last quarter of the last administration, 6.4 percent decrease. It grew 2.8 percent. That is almost a little over a 9-point turnaround. That's good news for the economy. But there are a lot of people still struggling.

So, yes, we believe that we need to have a jobs bill. And we think it is appropriate to address the funds that we've already authorized, not new funds but that we've already authorized, to try to bring this economy back, to not just look at it globally, but to look at individuals who are hurting. We want to apply those funds to those folks who are hurting and try to get them in their homes, get them a job, and get their families more stable.

Mr. CANTOR. Mr. Speaker, I appreciate the gentleman recognizing that there are differences, absolutely, on how we believe that we can work on getting this economy going again. I do believe that we have some similarities, which is why we proposed the No Cost Jobs Plan.

So I ask the gentleman again, are we going to see the three trade bills come to the floor? Because in my estimation, I believe at least one, if not all of the bills, can garner a majority of the votes on this floor, something we could do next week, leaving town saying we are committed to job creation. Are we going to see those bills, Mr. Speaker?

And I will yield.

Mr. HOYER. I thank the gentleman.

I'm going to give him the answer he knows is absolutely crystal clear. The answer to that is ''no.'' The bills are not ready to come to the floor. They need to come out of the Ways and Means Committee, as you know. They are not reported out of the Ways and Means Committee, and we are not going to bring them to the floor next week. If we brought them to the floor next week, and the gentleman knows, they would have no immediate impact.

The gentleman also knows, and has correctly stated, that I certainly am for and have been publicly reported over the last 6 months or more, I guess over a year, reported as being in favor of passing the Colombia agreement and passing the Panama agreement. I think the Korea agreement is a little more complicated in terms of making sure our markets are open to our automobiles, to our beef and other agricultural products to make sure we have a fair exchange. But Korea, obviously, is one of our largest trading partners. As the gentleman knows, that's an important agreement. We ought to give attention to it.

The gentleman knows that we are not going to bring those to the floor next week. The gentleman also knows that if we did and we passed them, and the Senate passed them somehow, that it would not make an immediate impact. You and I both agree that over the long term, it would be a positive impact. Others don't agree with that, but the answer to your question is ''no.''

Mr. CANTOR. I thank the gentleman, Mr. Speaker, and I think he makes the case for all the more reason we do something now. If there is no immediate impact tomorrow, at least we could be well on the way to fostering that impact on those jobs for the Americans who, as he correctly states, are facing a lot of trouble right now being out of work.

Mr. Speaker, I would like to ask the gentleman about the 72-hour rule and the importance of that that we felt back earlier this year. And because of the way that the stimulus bill was brought to the floor earlier, in January or February, the backlash was such that I believe the gentleman and his party committed to 72 hours to review any bill before it was voted on, for the Members as well as the public to realize their right to know.

Mr. Speaker, my question to the gentleman is: Why now have we abandoned that commitment? Why have we abandoned the public's right to know in major pieces of legislation this week, in both the omnibus bill as well as the bank bailout, the TARP II bill that we just passed? Both of those bills came to this floor. The House voted on it, on the example of the omnibus, and within 24 hours, not 72. And in the example of what we consider to be an extension of TARP and a bank bailout bill, there was a 249-page manager's amendment that was made available 8 a.m. yesterday, and that very same manager's amendment was voted on at 8:54 p.m. last night. How is it that we have now decided that it is not important to recognize and abide by the 72-hour rule?

And I yield to the gentleman.

Mr. HOYER. I thank the gentleman for yielding.

First of all, the gentleman has an inclination to state premises that we all agree on things that we don't necessarily all agree on.

Clearly, we want to give notice. Clearly, we believe we ought to give fair notice. As it relates to the bill that was considered today, that bill has had over 3 months of hearings and has been on the table for a long period of time. The gentleman is correct that the final bill and the manager's amendment did not have 72 hours, but almost all the components within it had been known to everybody as proposals that were on the table either in committee or substitute committee markup for some period of time.

With respect to the bill that you referred to that we passed on the six appropriations bills, we, of course, had numerous committee hearings, subcommittee markup, full committee markup, House consideration. We passed all six of those bills through this House. The gentleman is correct that there were amendments included in there, and there was notice of all those, but I would have liked more time.

The problem is, of course, we have come to what is, as the gentleman pointed out, a target date of the 18th. We still have important work to do. We intend to do that. We are going to give as much notice as we can do and meet our responsibilities to the American public.

The gentleman smiles when I say as much notice as we can give. The gentleman surely will not say, because the gentleman is honest, he understands this process as well as I do. He and I have been here for some years. I have been here a little longer. When his side was in control, as he knows, some majority pieces of legislation were considered within hours on this floor, the prescription drug bill being a specific example, the biggest entitlement reform we had had in a long period of time. You reported it at some hour in the a.m., 12 or 1 o'clock a.m., and reported it on the floor a little after 9 a.m.

□ 1500

We considered the bill that afternoon and passed it that day or early the next day. And that wasn't even, as I recall, at the end of the session. But the gentleman knows, as a practicality, both leaderships find it necessary, in order to complete the business that the public expects us to complete, to sometimes move that, when agreement can be reached, at the end of a session. Unfortunately, I've been at this legislative process for over 40 years, and Members like to delay until such time as they think delay is no longer an option.

Mr. CANTOR. I thank the gentleman.

Mr. Speaker, I was somewhat amused by the gentleman's commitment to

give the public and Members as much time as they, the majority, could. Again, we have a 72-hour rule in place, I thought, and that was for the very purpose of allowing all of us, including our constituents, the right to realize what's going on in this House. Obviously, we have a lot of work undone for the year. We've got 5 legislative days next week. Certainly, if we are going to be incurring the type of debt and expenditure that we are looking at, surely we could make sure that there is adequate notice and that the 72-hour rule is abided by.

Again, Mr. Speaker, I would say to the gentleman, this is what the public is tired of. I find it somewhat interesting that the gentleman says it's okay for the majority to do that because when we were in the majority we did that. Well, I know the gentleman knows, we were let go in the majority in 2006 and they assumed the majority. And again, there is a reason for that, the public is looking for transparency, the public is looking for fiscal responsibility, and certainly, when we are talking the numbers that we are talking, in terms of taxpayer dollars, $1.8 trillion in new debt, certainly, I think, Mr. Speaker, we should afford the public its right to know.

Mr. Speaker, I thank the gentleman very much.

Mr. HOYER. Will the gentleman yield before he yields back his time?

Mr. CANTOR. I yield.

Mr. HOYER. I appreciate the gentleman's observation that you were let go. I want to make it clear to the gentleman, I do not believe you were let go because you failed to meet a time frame for reporting bills. I believe, frankly, the substance of our work is that which the public makes a judgment on. And, frankly, we think that the reason that they turned to us in 2006 and 2008 was because they thought that the programs and policies you were pursuing weren't working for our country or for the economy or for them, with all due respect.

But I continue to tell the gentleman that we want to try to make sure, as you did—sometimes—that you, our Members, the public have sufficient knowledge to make the decisions that are called upon for them to make.

Mr. CANTOR. I thank the gentleman.

And I would say in closing that the gentleman may be right, it may be that the cause for the 2006 loss and the majority now coming into power was because of the policies, because of the war, because of fiscal practices, what have you, any number of things. But certainly now the gentleman knows that the public is not too keen on the agenda being pushed by this majority. In fact, most of the people in this country feel we're headed down the wrong track.

But also, Mr. Speaker, the public is extremely, extremely concerned about their future. We've got to restore the trust in this institution, Mr. Speaker. We've got to abide by the same rules that we expect the public to abide by, and that is transparency. That is, when we commit to a certain set of rules to live by, we ought not change them midcourse. That is not what we should be doing. We shouldn't be changing the rules of the game as far as the TARP program is concerned. The public thought that money would be paid back. We shouldn't be changing course in terms of the 72-hour rule. The public has gotten to know that and expects us to give them their right to know, Mr. Speaker. That's what I'm talking about in terms of this Democratic majority in this House living up to the public trust that they gained in 2006.

With that, Mr. Speaker, I thank the gentleman and I yield back.

## ADJOURNMENT TO MONDAY, DECEMBER 14, 2009

Mr. HOYER. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 12:30 p.m. on Monday next for morning-hour debate.

The SPEAKER pro tempore (Mr. TONKO). Is there objection to the request of the gentleman from Maryland?

There was no objection.

## IRANIAN PROTESTORS, THE WORLD IS WATCHING

(Mr. HASTINGS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTINGS of Florida. Mr. Speaker, one of the great privileges we have is to come here and speak about those who have departed life and to pay condolences and commiserate with their families.

Last week, three persons that were very dear to me died. They are Isaiah ''Ike'' Williams, a classmate of mine in law school from Jacksonville; C. Bette Winbush, the first black city commissioner in St. Petersburg; and the Reverend Samuel George, a Presbyterian minister that lived in Pittsburgh but in my earlier career worked in Fort Lauderdale. All three of these people fought their entire lives for tolerance and equality. The Reverend George taught me a great deal about ecumenism and interdenominational undertakings.

Their courage brings to mind for me the courage, turning away from their work, to those that are in the streets in Iran who are protesting their government as I did with Reverend George and C. Bette and Ike and are saying to their government that they should be free and have the opportunity to protest.

I just want those Iranians to know, as I give condolences to my friends that have all departed, that they are not alone. And one of the things that we used to say in the civil rights movement, the whole world is watching.

## SEPTEMBER 11 MEMORIAL SHOULD USE AMERICAN WORKERS TO COMPLETE PROJECT

(Ms. FOXX asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. FOXX. Mr. Speaker, it came to my attention this week that North Carolina Granite Corporation, a small business in Mt. Airy, North Carolina, was recently informed that it lost a bid to supply cut granite for the National September 11 Memorial in New York City. Unfortunately, news outlets reported that this business, which employs 135 people in the Fifth Congressional District, lost the contract to bidders in Italy and Africa.

Mr. Speaker, this is very disturbing. I hope that the decision-makers at the memorial will reconsider their decision to ship this important work overseas. The people of North Carolina Granite are highly talented workers with experience on projects such as the World War II Memorial in Washington, D.C. who are eager to help complete the National September 11 Memorial. In the midst of an economic downturn, it makes more sense than ever to use American craftsmen to help build a memorial in honor of those who sacrificed so much on that day 8 years ago.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT

(Mr. COFFMAN of Colorado asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. COFFMAN of Colorado. Mr. Speaker, I rise today to speak in strong opposition to the latest in a line of misguided pieces of legislation the House of Representatives has debated in the 111th Congress.

The Wall Street Reform and Consumer Protection Act may sound like an effort everyone can endorse, but unfortunately it is just the latest government takeover of private industry. This legislation will greatly expand the powers of the Federal Reserve. Government agents of the Federal Reserve could now be responsible for breaking up a profitable company merely due to their opinion that an eventual failure could pose a systemic threat to our economy. This flies in the face of the free market ideals and the American Dream, which used to be work hard and you can accomplish anything. Due to the actions of this Congress, it now reads, ''Work hard, fail, the government will bail you out; work hard and do well, the government will take you down.''

## GET OUR COUNTRY BACK ON TRACK

(Mr. MORAN of Kansas asked and was given permission to address the House for 1 minute.)

Mr. MORAN of Kansas. Mr. Speaker, Americans are being forced to foot the bill for trillions of dollars of increased government spending this year while they are struggling to make their own ends meet.

As Kansans sit at their kitchen table trying to balance their checkbooks, this Congress has been borrowing and spending money like there is no tomorrow. The latest example of this reckless spending is a 2,500-page omnibus spending bill approved by the House of Representatives yesterday. This $447 billion package does not require any of the tough choices that Americans are having to make every day in this difficult economy. Unfortunately, for the next generation of Americans, there will be severe consequences from our government's failure to control spending and the resulting huge increases in our national debt.

The Democrat leadership will soon try to raise our $12.1 trillion national debt limit by an additional $1.8 trillion. The Federal Government is mortgaging our Nation's future and its well-being to countries like China. The result of this spend-and-borrow approach is evident.

President Obama and Speaker PELOSI, show bold leadership and get our country back on track by cutting spending and reducing our country's debt, not by omnibus spending bills and debt ceiling increases.

## REMEMBERING ED STIMPSON

(Mr. DICKS asked and was given permission to address the House for 1 minute.)

Mr. DICKS. Madam Speaker, it is with great sadness that I come before the House to note the death of a leader in the civil aviation industry and a man familiar to many here in Congress. Mr. Ed Stimpson, who served as president of General Aviation Manufacturers Association for 19 years, died at his home on November 25 in Boise, Idaho. Many of us in this Chamber recall that he was the driving force behind the General Aviation Revitalization Act which altered the liability of small aircraft manufacturers and led to a reinvigoration of the small aircraft industry in the United States.

After he retired from direct leadership of the association, he took on a new project, the ''Be a Pilot'' campaign that was designed to increase the population of student pilots in the United States. It was a great success, not only in enlarging the number of citizens capable of flying live aircraft, but also in providing a technological boost to the manufacturing industry that resulted in the design and construction of new and safer aircraft.

Later, he was named by President Bill Clinton to the International Civil Aviation Organization, a Montreal-based group that promotes safe aviation around the world. He served in that post with the rank of ambassador through 2004, and he was one of three ambassadors to be reappointed by President George W. Bush. His reappointment was indicative of the bipartisan approach he brought to all of his endeavors.

Ed Stimpson was also a recipient of the Wright Brothers Memorial Trophy for Lifetime Achievement. He was a great leader, a great friend of many of us, and he will be missed.

I would like to insert a personal reflection that was published in Seattle last week by a long-time friend of Ed's, Mr. Ted Van Dyk.

OUR GOOD FRIEND, ED STIMPSON

(By Ted Van Dyk)

Ed Stimpson, a longtime leader in the civil-aviation industry, died this past Wednesday in Boise. His obituary, distributed via Associated Press from Boise and picked up by other media, was maddeningly unsatisfying. It listed his achievements as a U.S. ambassador, head of national civil-aviation bodies, and leader of a general-aviation trade association. But it gave no sense of his wonderful qualities as a human being and of his meaningful civic and political involvements.

Born in Bellingham exactly one month before I was, Ed Stimpson was the son of a beloved physician and the oldest of seven children. The hospital where both of us were born is now named after his father. We grew up in hard times and shared a firm commitment to the Democratic Party and its agenda of the time. The president of our high school Democratic Club was Sterling Munro, who later would serve as Sen. Henry (Scoop) Jackson's principal assistant.

In 1962, when I was being released from a recall to military service, a chance street-corner meeting with Ed led to my being hired by the then-European Communities (the present European Union). He was at that time representing the Seattle World's Fair in Washington, D.C. At the fair he met Dorothy Sortor, a Century 21 public-affairs officer, and later married her. They were brought together, I always thought, by Eddie Carlson, the driving force behind the fair and a lifetime friend and sponsor of many of us who were coming up at the time.

Later Ed went on to executive positions in government, in aviation, and in business. While an officer of Morrison-Knudsen, he and his wife Dottie bought a home in Boise which was their home base thereafter. Ed and Dottie also helped transform Boise from a conservative political bastion into the state's Democratic stronghold. In 1972, when Jackson had no chance of nomination, they campaigned hard for his presidential candidacy. Later, when House Speaker Tom Foley's reelection was threatened, they dropped everything and moved to Spokane to help in what turned out to be a losing effort.

Ed's and Dottie's strongest and longest friends have included Rep. Norm Dicks and his family, former Jackson chief of staff Denny Miller, and former Warren Magnuson chief of staff Jerry Grinstein. He and Dottie kept a photo album of their outings with the Dicks family. (Other local friends include two members of the Crosscut family, Peter Jackson, son of Scoop, and Gene Carlson, son of Eddie Carlson). Beyond politics, aviation, and the business world, Ed Stimpson had an army of friends and admirers who had met him at various intersections along the way. When he was diagnosed with lung cancer several months ago (Ed had never smoked), e-mails began flowing in great number among friends from all his lives.

I called Ed when I got the news. He had found himself short of breath while walking through the Denver airport and had gone to his doctor for what he thought would be a routine checkup. Later, the lung cancer spread to his brain.

As my own good luck would have it, I spent last Saturday with Ed and Dottie at St. Luke's hospital in Boise. He was heavily medicated. He argued unsuccessfully with his nurses that he be allowed to dress and ''have lunch and conversation at a more suitable place'' than at his hospital bed. Characteristically, he talked not about himself or his illness but about current public issues, his involvement in an aviation-industry study, and his pride in his part in strengthening the Idaho Democratic Party. Denny Miller visited a day later. Then Ed was sent home to hospice care. He passed almost immediately—spared, as it turned out, from a long ordeal for him and for Dottie which might have followed.

E-mails have flowed from the Stimpson network since his passing. That is because he was held in such love and respect by all whose lives he had touched. Over his lifetime he was never known to speak cruelly or harshly about another person. He preferred instead to make his own positive contributions wherever he could. His integrity shone. He was the archtype ''other-oriented'' person, always seeking to help other people and causes, never to advance himself. He was a good and rare human being.

## SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

(Mr. POE of Texas addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## CAP-AND-TRADE IS BAD FOR AMERICA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kansas (Mr. MORAN) is recognized for 5 minutes.

Mr. MORAN of Kansas. Mr. Speaker, one in 10 Americans are without jobs this holiday season. This level of unemployment is the highest our country has seen in a quarter-century. In the midst of these difficult times, jobs are at the top of America's holiday wish list, yet the President has sent negotiators to Copenhagen to devise and deliver another job killer.

Negotiators from nations around the world convened in the Danish capital this week with the goal of developing a successor to the failed Kyoto Protocol, which sought to reduce worldwide greenhouse gas emissions. When Kyoto was negotiated, the Senate unanimously approved the Byrd-Hagel resolution. This important resolution established U.S. policy that our country would not enter into any climate treaty that leaves out developing nations or hurts the American economy. In passing the resolution, the Senate recognized the damage such an agreement would do to the U.S. economy.

The President and his negotiators would be wise to abide by these guidelines today, as any agreement reached in Copenhagen would likely be more devastating to the American economy than Kyoto. But it's not just Copenhagen that Americans have to worry about, the President wants to pursue an environmental agenda in any way he can, including through cap-and-trade. In my view, cap-and-trade, approved by the House of Representatives in June, remains one of the most damaging pieces of legislation ever passed by the House of Representatives during my time in Congress, especially as it affects agriculture and rural America.

□ 1515

The passage of a cap-and-trade bill will increase the cost of doing business in the United States, will force business owners to close their doors, and will cause companies to leave the country for locations where costs are lower.

The respected Heritage Foundation studied the Waxman-Markey cap-and-trade bill. The study showed that the legislation would result in annual losses to GDP of almost $400 billion and that it would lead to the loss of 1 million jobs.

At a House Agriculture Subcommittee on Conservation, Credit, Energy, and Research hearing last week, USDA's chief economist and other experts from universities across the Nation all testified that the costs for fuel, fertilizer and other business inputs would increase under cap-and-trade, meaning more harm to business and the people they employ.

For example, one witness cited an Energy Information Administration analysis that showed, in 2030, the Waxman-Markey bill would raise diesel fuel costs by 15 percent, electricity costs by 22 percent and industrial natural gas costs by 26 percent. The last thing we need is another law or treaty that dashes the hope for economic recovery and that destroys more jobs, but the President continues to push for just that.

On Monday, the EPA ruled that carbon dioxide and five other greenhouse gases are a danger to public health and to the environment. This decision means EPA can impose greenhouse gas regulations without Congressional action. This threat is no reason to pass cap-and-trade. We must defeat cap-and-trade in the Senate and then put an end to the faulty interpretation of the Clean Air Act by the EPA.

The President should refrain from entering into international agreements, and the EPA must be stopped from making decisions that are not supported by science or current law. At a time when so many Americans are without work, the President needs to focus on ways to create jobs and to improve the economy.

A cap-and-trade bill, EPA regulations, or an international treaty, all of which are on the President's holiday wish list, would be devastating to the U.S. economy. That's a holiday gift that no American can afford. The passage of cap-and-trade, an agreement in Copenhagen, clean air findings by the EPA—we can just as soon leave those presents under the Christmas tree unopened.

President Obama and Speaker PELOSI, don't be the grinch that steals our Christmas. And I hope that is not ''just the way it is.''

## CEREAL NIGHT AND RECOGNIZING THE IMPORTANCE OF PAH AWARENESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Rhode Island (Mr. LANGEVIN) is recognized for 5 minutes.

### CEREAL NIGHT

Mr. LANGEVIN. Mr. Speaker, I rise today to recognize a very special event happening tonight in my district thanks to the efforts of a very special young boy and his family. This evening, the second annual Cereal Night will take place at North Kingstown High School in Rhode Island, which is where hundreds will gather to donate to our local food pantries.

The mastermind behind this event is one of my young constituents, Patrick Gannon, an 11-year-old 5th grader and Cub Scout from North Kingstown. Like all Rhode Islanders, Patrick has seen the devastating effects of the economic downturn in our State, where unemployment has reached 13 percent, where record numbers of foreclosures continue to force people from their homes, where food pantries are struggling to meet the needs in their communities, and where too many of our neighbors are desperate for a hand.

Well, last year, when he was only 10 years old, Patrick came up with a way to help. His idea was that, one night of the year, families could eat cereal for dinner and could donate the money or food they saved to a local food pantry. While encouraged by his parents, Bill and Jackie, he began to organize the first Cereal Night last December. Soon, friends, local businesses, and even our Governor were involved in highlighting this initiative.

On the night before the event, though, a snowstorm hit Rhode Island, making it doubtful that there would be a big turnout. Nevertheless, Patrick was there the next day at one of the drop-off sites, running out to cars through the snow to accept their donations. At the end of the day, three tons of food were donated to the Rhode Island Food Bank, and plans to build on this success were put in motion.

Like any proud mother, Jackie did her best to spread the word—reaching out to nonprofit organizations and even writing to President and Mrs. Obama, telling them about Patrick's work and asking them to make Cereal Night a national event. Well, sadly, she won't be able to see those efforts come to fruition. On November 7 of this year, 2 days before Patrick's 11th birthday, Jackie suffered a ruptured aneurysm and passed away. Well, her death was a shocking and heartbreaking blow to her family and friends, but they have channeled their grief towards the cause that she was inspired to embrace by her son Patrick.

This year, Cereal Night will be an opportunity for the community to come together to give something back to those in need, to celebrate Patrick's imagination and commitment and to honor the life of a beloved mother who touched all those who were lucky enough to know her.

This holiday season, we are reminded of how important it is to help each other get through these tough times. We are all reminded of families like the Gannons, where the spirit of giving and of serving the community is passed down from generation to generation. We are reminded that you are never too young to make a difference.

Patrick is an inspiration to me, and I encourage my colleagues and all those who are listening to follow his example by donating to a local food pantry, by starting a Cereal Night in your own community, and by spreading the word about this simple effort that can mean so much to a neighbor in need.

My thoughts and prayers go out to Jackie's family, including Patrick, her husband, Bill, and their younger son, Liam, as well as her friends and all those who mourn her loss.

### RECOGNIZING THE IMPORTANCE OF PAH AWARENESS

Mr. Speaker, I start a second statement, which is equally inspiring.

I consider it a privilege to recognize and commend the extraordinary efforts of a young man named Matt Moniz. This 11-year-old from Boulder, Colorado, scaled three of the world's seven summits in order to raise money and awareness for his best friend, Iain Hess, who suffers from Pulmonary Arterial Hypertension, or PAH.

PAH is a rare, progressive disorder characterized by abnormally high blood pressure in the pulmonary artery—the blood vessel that carries blood from the heart to the lungs. For people living with PAH, like Matt's friend, Iain, the simplest of daily activities can cause shortness of breath, dizziness, fatigue, chest pain, and swollen legs and ankles.

As an experienced climber, Matt is very familiar with these symptoms, which can often affect climbers at high altitudes; but while Matt knows that he'll be fine as soon as he descends the mountain, there is no known cure for those who suffer from PAH. It's a life-threatening disease that can cost thousands of dollars a month to treat. In fact, Iain's medical bills run more than $100,000 a year. Right now, Iain's family is fortunate to have health insurance that absorbs much of the cost of his care. However, they are all too aware that Iain may soon reach the lifetime limit of his coverage, leaving them no

choice but to pay for the care themselves.

That's why, Mr. Speaker, by the way, it is so important that we pass national health insurance that this House passed just a short time ago.

Equally cognizant of difficulties that Iain and his family face, Matt decided to do his part to help. In a noble act of true empathy and friendship, Matt Moniz joined his family and friends in a campaign to climb 14 of Colorado's 14,000-foot peaks in 14 days, covering a total of 42,020 vertical feet and 71 miles. This, in and of itself, would have been an incredible feat, but this extraordinary young man accomplished it in 8 days. His goal was to give each climber a firsthand sense of a typical day in the life of a patient living with PAH while simultaneously raising money to ease the financial burden for his friend Iain and his family.

Well, on Saturday, July 18, 2009, Matt and his fellow climbers completed this extraordinary endeavor, raising a total of $20,000 for the Iain Hess Breathe Easy Fund and the Pulmonary Hypertension Association. Of course, he could not have accomplished this amazing task without the love and support of his father, Mike, of his mother, Deidra, and of his twin sister, Kaylee—all of whom took part in the climb—as well as Iain's sister, Olivia Hess, and numerous other friends, family, supporters, community partners, and sponsors.

Mr. Speaker, Matt's compassion and tenacity exemplify the best of who we are and what we aspire to be. Matt is in the audience today with his family. I want to applaud Matt for his extraordinary effort, and I look forward to supporting his campaign to raise awareness of PAH so we can work toward a cure for everyone so that everyone can breathe a little easier.

## ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members not to make reference to those sitting in the gallery.

## THE DEMISE OF THE AMERICAN ECONOMY AND THE ROAD TO SOCIALISM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

Mr. BURTON of Indiana. Mr. Speaker, I get a big kick out of listening to the colloquy between the leadership people every week when we come to the end of the week and we start talking about the program for the following week. If I were an American citizen, sitting at home, watching this, I'd be so confused about what's going on. So I felt compelled tonight to come down here and just talk a little bit about what's going on so my colleagues back in their offices—and if anybody else is paying any attention—can really find out what's going on in this place.

This last fiscal year just passed. We went in the hole $1.4 trillion. So far, this fiscal year, in 2 months, we're ahead of last year's fiscal year. We were $1.4 trillion in the hole this last fiscal year, and we're already ahead of that this year. The health care bill that is pending in the Senate is going to cost between $1 trillion and $3 trillion—probably closer to $3 trillion if it passes. We passed an omnibus spending bill yesterday that cost $447 billion. Now, these aren't millions. We are talking about billions and trillions. The cap-and-trade bill that they are talking about, which is going to raise everybody's electric bills and gasoline bills and gas bills to heat their homes, is going to cost $894 billion.

We are digging ourselves into a hole that is unbelievable. Yet I hear my colleagues on the other side of the aisle saying, You know, we're going to create jobs; we're going to solve these problems; everything is coming up roses. It isn't.

I talked to some of the pages in the back today, young people who are out here who are getting a chance to see how Congress works. I actually feel sorry for them because we are creating an environment where, when they grow up and get out and get a job, they are going to be faced with very high inflation and with very high taxes. There is no way to pay for all of the things we are doing the way we are going. There is just no way.

With Medicare and Medicaid, Medicare is close to being bankrupt. On the other side, they are talking about lowering the age to 55 of the people who can become participants in Medicare. That's another 30-some million people they want to add to it, and it's supposed to go bankrupt in the next 3, 4, or 5 years. I mean it just does not make sense.

In addition to that—and these are all facts—they want to increase taxes, and they want to let the tax cuts we passed in about 2001 expire, which means that's a tax increase. If they expire, then taxes are going to go up, so they are going to raise taxes that way as well.

They talk about jobs and the economy. Taking money from the taxpayer and throwing it at the economy is not working. They tried that with the stimulus bill—over $1 trillion, when you include interest—and the jobless rate went up to 10.2 percent. The President said before he took office that he wouldn't let it go above 8 percent. Now they're bragging because it's back down to 10 percent, and it's probably going to go up again.

You can't create jobs with government money and by throwing money at it. You've got to do something to stimulate the small business man and the private sector. The way you do that is the way Ronald Reagan did it.

You come in, and you say to the businessman, Okay. We are going to cut your taxes so you can keep people on the payroll and can hire people and can produce more product.

You say to the consumer, the guy who is working, We're going to cut your taxes. You'll have more money to go out and buy a refrigerator or a car or something else.

Because of that, you create a demand economy. You start creating people wanting to buy things. Producers are going to produce things. You're going to have more people working because you're going to need people working to produce those things. That's what Reagan did, and we had 20 years of economic growth. They're doing just the opposite right now.

Right now, this administration and the Democrats in Congress are taking over the automobile industry. We all know that. They are trying to take over the health industry with socialized medicine, which is one-sixth of our economy. They are trying to take over the energy area, which is going to raise everybody's cost of electricity, gasoline, and gas with a cap-and-trade bill. They are trying to control completely the financial industry—the banks and Wall Street and everything else.

Socialism simply does not work. Blowing taxpayers' money like we are doing does not work. We are creating an environment right now where we are going to see real economic chaos, and I believe everybody in America feels it. When I go to my town meetings and have 500 or 600 people show up when we used to have 40, they feel it. They know what's going on, and they want government to get out of the way. They want jobs created, but they know that it has to be created through the private sector. Government can't give unless it takes, and it is taking and taking and taking and taking.

So I would just like to say to my colleagues back in their offices and to anybody else who pays attention—and if I were talking to the American people, I'd say—Call your Congressmen and Senators, and tell them to stop this madness.

□ 1530

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Connecticut (Mr. MURPHY) is recognized for 5 minutes.

(Mr. MURPHY of Connecticut addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

## HONORING RUTH TIGHE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from the Northern Mariana Islands (Mr. SABLAN) is recognized for 5 minutes.

Mr. SABLAN. Mr. Speaker, here is a worthy New Year's resolution. ''Try to remember to praise people at the time of their praiseworthy performance, instead of years afterwards, or, as is

often the case, after they've died. We should let people know that we appreciate them, that their efforts are noticed, while it still makes a difference to them.'' These wise words are from the pen of Ruth L. Tighe, citizen, librarian, environmentalist, community activist, and newspaper columnist in the Northern Mariana Islands.

I would like to take Ruth's advice and not wait for the new year by telling Congress about Ruth Tighe herself. She is a person whose efforts have been noticed and noteworthy for more than three decades in the Marianas. She has made a difference, and I want her to know how much she is appreciated.

Even before arriving in the Mariana Islands, Ruth was living a remarkable story. Born in Germany in 1931, Ruth emigrated to the United States with her family in 1934. She grew up in upstate New York, became a naturalized citizen and worked her way through school, eventually earning a master's in library science from Columbia University while raising five children as a single mother.

It was as a professional librarian that Ruth came to our islands. She was there to help the people of Guam, the Northern Marianas and the Trust Territory of the Pacific Islands prepare for the first-ever White House Conference on Libraries and Information Science held in 1979. Ruth fell in love with the Pacific and soon returned, working for the Marianas Department of Education. She has trained school librarians and raised public awareness about the importance of reading and enriching the quality of our lives.

Ruth eventually turned from managing the written words of others to writing her own. She became a reporter and editor of one of the Marianas newspapers. She also established her signature column, ''On My Mind.'' Over the course of her many years of commenting on island issues, Ruth has always strived to be fair, objective, informative and entertaining. Judging by the popularity of her column, today a much-read and respected blog among people from many diverse backgrounds and walks of life, I believe she has succeeded.

Never afraid of challenges, at the age of 50, Ruth took up scuba diving and has since accumulated a record of over 400 dives. Enamored with the rich coral reefs and colorful marine life Ruth encountered under water, Ruth became a fierce defender of all the natural environment. She has advocated for the protection of coral reefs and native forests, stricter clean-water regulations, the cleanup of PCB contamination in the village of Tanapag, protection of the historic Sugar Dock Beach, and the creation of the national marine monument in the Northern Mariana Islands. Ruth has drawn others to the cause, helping form several community-based environmental groups, including the CNMI Organization For Conservation Outreach, Beautify CNMI, the Friends of the Monument, and the Mariana Islands Nature Alliance.

Here is another familiar view of Ruth. Approaching the microphone at a public hearing and introducing herself, Ruth Tighe, citizen. Through her writing and through her own active participation, Ruth has been an advocate for good governance and a model of informed citizenry. Always, Ruth offers constructive solutions that seek to benefit the islands and all the people, rather than her own personal or professional gain. Among many causes, Ruth has campaigned for the advancement of women's groups, a transparent and accountable government, and a more humanitarian approach to immigration and labor reform.

Ruth's weekly column and other writings have also helped foster and strengthen our sense of community. Often this takes the form of praise to people and organizations in the Marianas for jobs well done, including resourceful teachers, local newspapers for insightful reports, businesses that provided excellent customer service, community volunteers, and numerous individuals who wrote articulate columns or letters of their own.

I feel glad to be able to turn the light back on Ruth herself for the praiseworthy person that she is. Today Ruth is valiantly battling cancer of the lung, successfully, it would appear.

But I want to take her advice and say loud and clear, and on behalf of the people of the Northern Mariana Islands, thank you, Ruth Tighe, for all you have done, and, we pray, will continue to do for years to come to make the Northern Mariana Islands a wonderful place to be.

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. PAUL) is recognized for 5 minutes.

(Mr. PAUL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

(Ms. WOOLSEY addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

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## NOVEMBER MASSACRE IN PHILIPPINES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. SCHIFF) is recognized for 5 minutes.

Mr. SCHIFF. Mr. Speaker, I rise today in support of Mr. BERMAN's resolution, H. Con. Res. 218.

On November 23, 57 people were systematically massacred in the southern Maguindanao Province of the Philippines. The massacre is considered the deadliest election-related attack in the country's history.

Reports have alleged that the massacre was a planned ambush by the Ampatuan clan on a group of journalists and family members of supporters of a gubernatorial candidate, Ismael Mangudadatu. The group was traveling through the Ampatuan township in a caravan to the provincial capital to file candidacy documents on behalf of Mr. Mangudadatu. The 57 victims were covered in a mass grave only a day after they were killed.

Mr. Mangudadatu, the gubernatorial candidate, has stated that he believes it was clear the attack was planned because the huge hole that acted as the mass grave had been dug before the attack.

The Ampatuan clan is one of the most politically powerful in the region and has ruled the impoverished Maguindanao Province since 2001 with brute force and intimidation. The Ampatuans are notorious for running a large pro-government army, which include many militiamen who serve as an auxiliary force to the military and police when battling insurgents in the region.

Andal Ampatuan, Jr., a local mayor and son of the provincial governor, is believed to have ordered the killings and has been charged with 25 counts of murder. He turned himself in late November.

Philippine President Arroyo declared November 26 a national day of mourning and said, ''This is a supreme act of inhumanity that is a blight on our nation. The perpetrators will not escape justice. The law will hunt them until they are caught.''

I hope President Arroyo stays true to these words. However, the Ampatuan clan is strongly allied with President Arroyo, and human rights groups are concerned that this relationship could hinder an impartial investigation. Additionally, human rights groups and democracy advocates are concerned about a recent decision President Arroyo made to declare martial law in the region, arguing she lacks the constitutional authority.

Mr. Speaker, as the co-Chair of the Congressional Caucus for Freedom of the Press, there is another element of this attack that is particularly distressing to me. Of the 57 killed in the massacre, 30 were journalists and media workers. According to Reporters Without Borders and the Committee to Protect Journalists, this is the deadliest known attack on journalists in history.

Information is power, which is precisely why journalists far too often become targets for groups like the Ampatuan clan. A free and independent media provides the nourishment for democracy to thrive and grow and expose corrupt factions like the Ampatuan clan. Citizens rely upon credible, accurate information from the media to make informed decisions and hold their leaders accountable. Reporters and editors who demand reform, accountability, and transparency increasingly find themselves at risk. The censorship, intimidation and murder of these

journalists are not crimes only against these individuals; they also impact those who are denied access to their ideas and information.

Mr. Speaker, we cannot let these crimes go unpunished. We need to shine a spotlight brightly on the Philippines until those who are responsible are brought to justice. President Arroyo needs to sever any ties she has with the Ampatuan clan and should request an independent investigation by the Philippine National Bureau of Investigation. For far too long the Philippines have suffered from the plague of corruption, impunity, and violence, and it is time for the international community to demand reform.

November 23, 2009, was a sad day in the history of Philippines and a dark day for press freedom. I was proud to support the resolution's passage, which puts the United States on record as condemning this atrocious act and sending our condolences to the families and friends of the victims.

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida (Mr. GRAYSON) is recognized for 5 minutes.

(Mr. GRAYSON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

(Mr. JONES addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

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## WE ARE LOSING OUR FREEDOM IN THE UNITED STATES

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 2009, the gentleman from California (Mr. DANIEL E. LUNGREN) is recognized for 60 minutes as the designee of the minority leader.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, earlier the majority leader, in his dialogue with the Republican whip, stated that perhaps the reason that Republicans were relieved of their responsibility of being the majority in the House of Representatives was because of the substance of legislation considered at that time, rather than procedure.

Well, I am not going to quarrel with the majority leader, but I would like to change our debate from the past to the present and the future. I would like to examine some common themes that are running through the substance of the legislation that has been presented on this floor during this year.

I might say that my desire to have this hour today was prompted by a discussion I had with a member of my constituency, a woman living in my district, who came up to me at my last town hall meeting. As we were wrapping up the meeting and after I had spoken with a number of individual constituents, I was starting to leave the room when this woman, somewhat older than I, came up to me, and she had tears in her eyes and she literally began to tremble as she began to speak to me. What was noticeable immediately was that she spoke with a heavy Eastern European accent.

She explained to me that decades ago she had had the opportunity to escape from a communist country and come to this country for the freedom that it allowed her. She said, with tears in her eyes, Mr. Congressman, please help us stop what's happened. She said, I fear that we are losing our freedom here in the United States and that my children and my grandchildren will not have the same freedoms that I came to this country for. She also said that she had recently visited friends in Europe, and she said, Mr. Congressman, they are laughing at us. They are seeing us give away our freedoms in this country. Please don't allow that to happen.

I thought that it might be important for us to, on this occasion, pause for a moment and think about what that means. What do we mean when we talk about freedom in this country? What was this concept of freedom or liberty? How was it understood by our Founding Fathers? Well, the best way to try and figure that out, I would suggest, is to go to what we call our founding documents, the primary of which is the Declaration of Independence.

In the second paragraph of the Declaration of Independence it says these words, We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute a new government, laying its foundation on such principles and organizing its powers in such form as to them shall seem most likely to affect their safety and happiness.

□ 1545

Words that many of us have read as we have studied them in school, perhaps not studied them enough. These words are not that difficult to understand. Their meanings are not that difficult to ascertain. ''We hold these truths to be self-evident'': It means that they are easily understood. By applying reason, we can see that these truths exist, not just for us but for all people who have the capacity to reason. The first thing they say is that ''all men are created equal.'' Of course, they meant that in the universal term, that all individuals are created equal.

''That they are endowed by their Creator with certain inalienable rights.'' Now, the revolutionary aspect of that simple statement was this: Prior to that time, organized governments appeared to suggest that the rights that people had were not given to them by their creator; that is, they did not find themselves within individuals. Rather, all rights were those invested in the government, usually the majestic monarch, who, if they had a religious belief, it was that the monarch had a direct relationship with God far more direct than the individual, and that therefore the monarch decided what rights were given to the people. In other words, individuals only had rights at the sufferance of the government. The revolutionary aspect of this Declaration of Independence was not only that we were declaring our independence from the mother country but we were basing that declaration on self-evident truths that we as individuals had rights given to us directly by our God. This was a transformation of the then traditional thought that the individual was subservient necessarily to the state.

And we went further in this statement, our forefathers did. That is to declare some of those unalienable rights to be life, liberty, and the pursuit of happiness. And then interestingly in this Declaration, our Founders thought it important to say this: ''That to secure these rights, governments are instituted among men.'' Not to obtain these rights because the rights already exist. To secure these rights. Government is to be put in a place of protecting those rights that already exist, not to give us those rights. Now, this is revolutionary because it established a relationship in which the people essentially rule. And that's why it said further that governments are instituted among men—meaning men, women, and children—among all, deriving, that is, the governments, their just powers from the consent of the governed. In other words, once again it is the notion of limited government, a government limited in its power only by that which is given to them by the people and the people only give up those rights which they voluntarily decide to give up. And then, of course, when we get to our Constitution, the actual legal document which underlies all of the laws of the United States, it begins with these words:

''We the People of the United States, in Order to form a more perfect Union,

establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.''

In other words, if you look at the operative parts of that opening sentence, it is ''we the people of the United States'' do ordain and establish the Constitution for the United States of America. ''We the people,'' not the government. We're forming the government and we're establishing the contract which then exists between ourselves and our government. And it very clearly states, as informed by the Declaration of Independence, that our independence comes as a right essentially of natural law. They didn't have any trouble saying ''Creator'' with a capital ''C.'' Now, this doesn't mean that rights in this country are not acknowledged among people who don't believe in God, but what it means is our foundational documents presume that we have rights given to us directly by God.

One would think, therefore, that under those circumstances when we the people decide to establish a governmental structure that that is a blueprint for majority rule, and in most cases that is true. But one of the other intriguing and important aspects of our Constitution, as amended by the Bill of Rights and the other amendments, is that the majority voluntarily restricted its majority rule in specific instances. We in some ways specifically said the majority rule will be limited so that minority rights in certain specific instances may exist. So in some ways you can say that the Constitution and the amendments put a restriction on democracy. It limits democratic practices. It limits our ability as free individuals to collectively make a decision as to our governance. But we accepted that. We volunteered that on our own.

Why do I bring that up? I bring that up because essentially if we're going to follow the Constitution, it means all branches of government must follow the Constitution and it means that we ought to be concerned if we have a court that presumes to trespass on the appropriate areas of responsibility that we the people did not give away or restrict but retained to ourselves and therefore allowed for decisions in the future to be made by majority rule. That's why it's important for us to understand that while the Congress has a role, the President has a role, and the courts have a role, none is truly superior to the other.

There are certain areas in which we are given primacy of responsibility. Here in the Congress we're responsible for legislating, the executive branch for executing, and the judicial branch for deciding in some ways proper interpretation of what the legislative branch has said or rules and regulations that the executive branch has promulgated. But just as importantly, if our courts are going to not unnecessarily interfere with our freedom, the courts should apply what I call ''legal humility'' and understand the limitations of their ambit of authority. And if they trespass into those other areas, they by that act take away from our individual freedom. Why? Because they then arrogate to themselves decisions that were to be left to the people. And if, in fact, they say they are doing it on a constitutional basis, they are saying, from our decision, there is no appeal; we are the ultimate decider.

Now, to put it in simpler terms, one time, and I believe I was watching television when I saw this, I heard Justice Scalia attempt to explain this problem in this way: He said when he was a kid and you saw a problem, you saw something you didn't like, you saw something that ought to be changed, he said you would say ''There ought to be a law.'' He said, unfortunately, now today all too often when people see something they don't like, see something that ought to be changed as far as they're concerned they say, ''Oh, it's unconstitutional.''

Now, those two different statements convey a tremendous difference in substance. On the one case if you say, I don't like what I'm seeing, there ought to be a law, you say the legislative process, the democratic process, people by way of persuasion and ultimately by vote either directly by the people, and in my home State of California we have some direct votes by way of initiative, or by our representatives, which is normally the case, either in our State legislatures or here in the Congress, you make an appeal to attempt to persuade a majority in those bodies to your position, and that's how you change law. Too often people give up on that process and attempt to try to say that their particular problem is uniquely a constitutional problem and that that problem, therefore, is so important it can only be decided by way of reference to the Constitution and the final arbiter of the Constitution is the Supreme Court.

In one case in California in the Ninth Circuit, and I'll paraphrase this because I don't have the words exactly in front of me, a judge on the Ninth Circuit in dissent said that because something is important does not mean it is constitutional. And he went on to say it would seem in our scheme of government it should be just the opposite way, that most important questions would be decided by the people because we're a democracy and that under only exceptional and limited circumstances would they be decided by the courts as something constitutional.

But what have we done here in this House this year with respect to the freedoms? What, in fact, was my constituent saying to me, what was that lady saying to me, about her fear that we're losing our freedoms? Well, I could engage in a conversation with her about my concerns over where the courts have overreached. I believe she was directing me to those subjects that we have been discussing here and voting here on this floor and in the Senate, in the other body, on matters of substance, the debate of which rarely includes a discussion of freedom.

Let me just take one to start with: The health care bill that was on this floor and the provisions of a health care bill or bills that are being considered in the Senate. One of the rarely remarked-upon elements of that bill here, or the bills over in the Senate, is the mandate on the individual whereby it states that as a condition of remaining in the United States as a legal person in the United States, you must purchase health insurance as determined by the Federal Government on a yearly basis.

Now, the argument has been made that, well, we have a problem with health care in this country. Some call it a crisis. I would say that I know of no one who wants us to maintain the status quo. The question is, what is the proper response to the challenges we have? But some have said if you're going to look at this from afar or systemically, what you ought to do is to require everybody to have health care insurance.

Well, that might be an interesting idea. But we have a sense of limited government established in the Constitution of which I spoke before, and the idea that government is limited is essential to that understanding of freedom. And I look in vain in the words of the Constitution to find anywhere that I am charged with the authority as a Member of this body and working with other Members collectively in this body to say that an American may not remain an American unless or until he or she purchases the insurance that I deem they must have and that I could change from year to year to year.

□ 1600

Not only that, I see nowhere where it says that I can enforce that obligation by way of threat of fine or jail sentence, and that is what happens in the bills that we have had before us.

And my question is, as much as I want us to solve the problems inherent in the current health care system, I run up against, with all due respect to the former Vice President of the United States, what I consider to be the real inconvenient truth. It is called the Constitution. It doesn't allow us to do everything that we would like to do. It doesn't allow government to take all of the money or to take your freedoms away or my freedoms away when it is convenient. We have to do it within the context, within the four corners of the Constitution of the United States.

Now the President of the United States in his address to the Congress said, well, this is similar to having auto insurance. It is not, Mr. President. And to those who have argued that on this floor, I would say it is not. If you have ever been involved in cases

involving cars, automobile accidents, and insurance coverage, et cetera, you know that we do not have a right to drive on the public roads; it is called a privilege. You can condition a privilege. The other thing is no one has an obligation to have a car. If you choose not to have a car, you don't have to have car insurance. If you keep your car in the garage, you don't have to have car insurance. If you keep it on display in your house, you don't have to have car insurance. If you have a farm or ranch and you never put it on a public road, you don't have to have car insurance. Why, because you are not on the public roads upon which it is a privilege to drive, not a right.

My right and your right and the right of anybody in this Chamber or any of our constituents to exist in the United States as a legal person should not be conditioned on some obligation that we in the Congress decide. Oh, we think it is a good thing for the overall system that everybody must have health care; therefore, we are going to require each person to have it, and if you don't have it in exactly the form we say, you are going to be fined, and if you don't pay the fine, you can be sent to prison. If we say that on this particular part of our life, where does it end?

There has been very little talk about freedom when we talked about the cap-and-trade bill, and yet we know it is going to impose tremendous taxes and a regulatory regime on virtually everything we do. When you turn on your light switch at home, when you turn on your computer, when you pick up your telephone, when you walk out the door, when you get in your car, when you drive your car, when you go anywhere, the costs are going to be enormous. One of the dirty little secrets around here is that they hope we won't notice because they will be hidden costs. You are not going to be presented with the cost every time you turn on your light switch, but it will be embedded in the cost that you pay on a monthly basis. It is not going to affect you each time you turn on the car because they are not going to put a bill in front of you every time you drive your car, but every time you get gasoline, you will. Any time you use anything that is energy related, you are going to pay a penalty, essentially, for using that, and that determination will be made by the Federal Government.

But that was not enough for some. No, last week, or was it earlier this week—I forget now—the EPA administrator made an endangerment finding on $CO_2$ and other greenhouse gases as being pollutants. Now, you and I could sit down or others could sit down and argue about how we would define pollutants, but there is no one who can rationally argue, in my judgment, that the Clean Air Act, there was any anticipation by those who voted on it in the House or the Senate that this would include such a determination by the EPA administrator, and that as a result, the EPA administrator would be in the position of regulating our lives to the extent that he or she will have in the future.

When you realize what this regulatory regime is going to be, they are telling us that if your Congress—that is, your legislators, and I am talking about generally if constituents would be told this—that your elected officials as legislators make the decision not to eventually pass cap-and-trade and give that authority to the Federal Government, it will not matter because the EPA has, by administrative decision, taken that out of the hands of the Congress and now will decide it themselves.

So, therefore, and I believe that many Federal employees are wonderful people attempting to do the job as they see fit, but nonetheless, in many ways they are faceless bureaucrats who are not responsive to people at town hall meetings, who do not have to go before the people for reconsideration or vote every 2 years as those in the House do, or every 6 years as those in the Senate do. In other words, they are part of the executive branch, and in administering, they are at least another arm's length away from the people that are supposed to be free in our Nation. And so we are being told by some, that unless we in the Congress follow what they want us to do in the executive branch, they will take a command and control authority themselves and do even worse than we would do, so, therefore, we better act.

Now, I don't know what you call that. There are a lot of words that come to mind, but ''freedom'' is not one of them.

We also hear that Members of this body, including the Speaker, are desirous of attending the Climate Change Conference in Copenhagen. It used to be called ''global warming.'' It is now called ''climate change.'' Many people have questions about global warming. You can't say there is not climate change, because that is one thing we can all agree on. Climate does change. That certainly doesn't help us understand what the nature of the climate change is and the cyclical nature of the climate change and the natural part of the climate change versus the man-made part. In fact, we have been told by some, including the former Vice President, that we have no right to question it.

I don't know, Mr. Speaker, what you were taught when you were in school, but I was taught that science is the continuing activity of questioning, that science is attempting to pursue certain truths in the natural world, and the only way you can determine those is by constantly putting up your proposition to peer review, if you will, and questioning and that skepticism is a good thing; not cynicism, but skepticism. And yet we have been told that we are not allowed to question it, that all of the questions have been answered and that, therefore, we should genuflect to this current notion of the scientific determination and, in essence, take the normal sense of politics in the best sense, that is, I mean, individuals through their power at the ballot box, to be able to make determinations as to how they wish to be ruled in this, a self-governing Nation.

But we have been told, no, if we do that, we are selfish. In fact, the newly elected leader of the European Parliament announced that number one on his hit parade was to make sure that they had some sort of schematic achievement at this Copenhagen Conference, and in explaining it he used the term ''global governance'' at least three times; global governance. Interestingly, because I believe the former Vice President of the United States, in speaking to a group in London on the day that this House passed cap-and-trade, announced to that august group that this was a great triumph for what they were working on because it was the first real step toward global governance.

I do know one thing about our Founding Fathers, the Founders of this country: they were not about global governance. They were not about the idea of a powerful, deciding force across an ocean ruling their lives. As a matter of fact, the essence of the revolution was casting off the authority of the mother country and allowing us here, in what became the United States, to be involved in a process, an experiment in self-governance that continues to this day.

So when I hear the term ''global governance,'' I get worried. I get worried because I think the Founding Fathers of this country would have been worried. Global governance suggests an authority somewhere up there with a global perspective that is somehow considered superior to our ability to govern in our country, in our State, and at the local level.

And if we accept that argument, it seems to me that we reject the notion of federalism that is at the base of the protection of individual rights in this country. Some people have said or made the observation on more than one occasion that Congress appears to be an inefficient institution involved in an in inefficient process. Well, you know, that is right. And in some ways that is a direct result of the Founding Fathers who believed that in order to avoid the fads of the time, that they needed to have a system of checks and balances which sacrificed efficiency for the protection of freedom. That is, they thought that a government further away from you and more powerful than you and individual institutions closer to you could do more harm overall than a decision made by an individual or by a family or by a group where that wrong might be confined to just that individual, that family, or that group. So they believed that in order to protect against the overreach, the mistakes of a government that could have overwhelming power, they would try and defuse that power and

promote the idea of numerous different entities recognizing what some call—and it is called, actually, as a matter of Catholic social policy—the principle of subsidiarity. That essentially means that decisions ought to be made by the individual when he or she can make them; then an individual within the family; and then an individual or family within or surrounding what are known as mediating institutions, voluntary institutions, churches, voluntary associations, clubs, neighborhood groups, and then government, but government at the closest level, meaning local government, then county government, then regional government, then State government, and then Federal Government.

The interesting thought there is not only does it protect the freedom of the individual, but in most cases it creates a more vibrant society, because all parts of that society, beginning with the individual, contribute to the vitality of the society because they, in fact, themselves, are vital to that community. It is a notion that local government is important.

□ 1615

I mean, if you look at Tocqueville's tremendous work about this country in the 1800s, he talked about us being a country of joiners, a country of voluntary associations, a country of churches. And he likened this new America to the old Europe, or he contrasted this new America to the old Europe, and suggested that America was different, and America had a future that was different than what Europe had precisely because of the recognition of the worth of the individual and all of these institutions that protected the individual from the overwhelming power of the government but also created a more vibrant society as a result of this activity.

And yet, if you're looking at cap-and-trade, if you're looking at the EPA endangerment finding and the consequences of that, if you're looking at the hopes of the people at Copenhagen who wish they had global governance, it moves us in the other direction.

What other decisions have we been making that may impinge upon the freedom of the American people? Well, you know, when you talk about taxes, you're not just talking about taking money out of somebody's pocket; you're talking about when you take money out of your pocket, they may have less money to do something that they, in their own individual lives, believe is best for them or best for their family or best for their church or best for their association or best for their local government, as opposed to the Federal Government.

And too often, we have been told that it's un-American to pay low taxes. In fact, I believe in the last election in an interview, the current Vice President of the United States said something to the effect that it is American to pay more taxes. The Supreme Court has said you're not obligated to pay any more taxes than you're legally required to. If you want to voluntarily give money to the government, that's fine.

Why would the court say that, and why would that be right? Because taxes are an involuntary taking from an individual to the government. Don't get me wrong—I don't think taxes are unnecessary. They are necessary. But I think we have a legal and moral obligation as protectors of the freedom of the people to not exact from them anything more than is absolutely necessary to do the proper functioning of government. Because if we do more than that, we are taking some of the freedom of the American people away.

Similarly, in the area of spending—as well as in the area of debt, and perhaps even more in the area of debt because that not only impacts us today as individual members of this society, but that impacts our children and our grandchildren and children still unborn in terms of their ability to be able to live their lives and to have the free expression of their talents in such a way that they may make contributions to this world and that they may be free men and women.

And so the—I will use a legal term—the gravamen of my argument tonight or this afternoon is that my constituent who fled from communism in Eastern Europe to this country decades ago for the freedom that this country allowed her and the fear that she's expressed that we're losing some of these freedoms is not a wild notion on her part but is in fact a significant concern that has a reasonable basis. And that we in Congress have an obligation to listen to people such as my constituent who said, Please don't take our freedom away.

We rarely hear freedom spoken of on this floor, and we rarely hear it spoken of in the context of the legislation that we have before us. But we should understand. If we genuflect to an overweaningly powerful government, we are essentially changing the relationship that exists between those of us as individuals and our government as understood by our Founding Fathers in the Constitution.

And I would stand with Abraham Lincoln when he said that the Constitution can only be properly understood as informed by the words of the Declaration of Independence. And the words of the Declaration of Independence, once again, tell us that we hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men.

Not that government gives us these rights; government is supposed to protect those rights, secure those rights, those rights that we, through rational perception, can determine—our God-given natural rights.

I would hope that we wouldn't believe that those are just old-fashioned words, but those are in fact guiding lights by which we make our decisions here on the floor of the House, or that we ought to throw away or cast aside comments made by our constituents indicating to us that they fear we may be losing our freedoms. That is not a panic attack by someone. That's not an act of delirium. Rather, it is a deep-seated concern that I think we should follow advisedly.

And Mr. Speaker, I would just hope that as we go forward with the remaining days of this year, and as we approach next year, that as we look at something as important as health care, we try and say, how do we deal with the challenges that exist in health care without subverting the sense of freedom and liberty that is contained in the Constitution? We can do it; we just have to think again. We can do it because we know generations that have gone before us have reached their challenges without in any way violating our Constitution but rather working towards securing those liberties that are recognized in our Constitution.

And my friend from Texas, would you like me to yield to you?

Mr. GOHMERT. I appreciate my friend's point. I have been listening, and I have been very moved by the words from my friend from California.

When you think about, as my friend from California pointed out, the Constitution and the words ''We the people of the United States, in order to form a more perfect union,'' then it says ''and to secure the blessings of liberty to ourselves and our posterity,'' and you look at the 1,990 pages in that health care bill, and you realize, as my friend pointed out, you're going to require people to purchase a policy just to live, and do it under the guise of helping them. When you read the bill, you find out if you're just above the poverty level in that bill, but you don't make enough money to buy the Cadillac policy required in that law, then we're going to add an extra 2½ percent income tax to you just to live in this country.

And as my friend pointed out, so often we've heard the President talk about, Well, you have to buy car insurance. I would challenge anyone to find a State in this country that requires any individual—because there isn't one—requires any individual to purchase insurance to protect his or her own car for damages to his or her own car. No.

Every State requires you to buy insurance against hurting another individual or property. It does not require you to buy insurance even to have the privilege to drive. As my friend pointed out, it is a privilege, but just to have that privilege they don't make you buy insurance to protect your own car. No. They make you buy it to protect somebody else in order to enjoy that privilege.

And then we've heard so many people here say, We're worried about the jobs, and that's why we've got to pass climate change. And we have people come

one after another to the floor and say this will not cost jobs. This is going to help people. It's going to provide green jobs. And what that said to everyone who has read the bill, when they heard someone say ''this bill will not cost jobs,'' what it said is they didn't read the bill, because if you read over past 900, between 900 and 1,000, there is something created called the—I believe it's the Climate Change Adjustment Fund, and it says very clearly in there it is designed for those who lose their jobs as a result of the climate change bill.

And so, they obviously didn't read that.

Mr. DANIEL E. LUNGREN of California. If the gentleman will yield.

Mr. GOHMERT. Yes. Certainly I'll yield.

Mr. DANIEL E. LUNGREN of California. In other words, the bill anticipated a loss of jobs and creates a specific fund to reimburse people or to subsidize people or to in some way help those people who lose their job as a result of the effects of the bill.

Mr. GOHMERT. That's right. And it's going to have to raise taxes and raise costs for everything else in order to create the fund to pay the people that lose the jobs as a result of the bill.

And there's other good news in there for Members of Congress, though, that voted for the bill—and it seemed a little self-serving to be in there—and obviously the people who said it wouldn't cost jobs just hadn't read the bill, but whoever's staff member or special interest group wrote that bill, they knew people would lose their jobs.

But then also the fund is created to provide relocation allowances for those who lose their jobs to try to help them move to where their jobs are going. Unfortunately, it will not provide money for you to go to China, India, Argentina—the places where the jobs will really be sent if this bill becomes law.

But that bill provides a self-serving aspect because I know in my heart, having read that bill, that when people across America get those huge energy bills that result from the cap-and-trade bill, when they start getting those bills, they're going to be so mad. They're going to vote Members out who voted for that bill, but the good news to the Members is when they lose their job as a result of this bill, they may be entitled to a relocation allowance and subsidies for losing their jobs as a result of the bill.

Mr. DANIEL E. LUNGREN of California. If the gentleman will yield on that.

Mr. GOHMERT. Yes, I will.

Mr. DANIEL E. LUNGREN of California. One of the concerns we ought to have is making people more dependent on government. When you make people dependent on government, you necessarily take away some of their freedom. And that's one of the things that we ought to be concerned about here.

We know through every economic analysis that's available that the progenitor of jobs, the creator of jobs, the source of jobs in this country is the private sector. We know that more and more abides in the small-and medium-sized businesses.

And if in fact we were dedicated to creating jobs at this time, it would make far more sense to do what the gentleman suggested well over a year ago, that we suspend the payroll tax, that we suspend the payroll tax both from the employer and the employee, which would have the effect of having immediate income in the pockets of both employer and employee, and we would then trust the individuals.

Because employers and employees are individuals. We would trust them to make rational decisions in their lives which may just be better collectively than the decisions imposed on them by the Federal Government, where we choose winners and losers, and necessarily have to make political decisions with respect to winners and losers. And wouldn't that more quickly cause an impact on the economy on a positive side than waiting for whatever Congress and whatever administration decides finally in terms of distributing funds as they see it?

Mr. GOHMERT. The gentleman is so right. And it goes back to the beginning of the Constitution. That would go so much farther to secure the blessings of liberty. For, as they said, to ourselves and our posterity—posterity of the future generations.

But you go back to this atrocious health care bill that was passed, there's even what's come to be called the wheelchair tax in that.

□ 1630

How is that going to secure liberty for anybody?

Mr. DANIEL E. LUNGREN of California. Is the gentleman talking about the medical equipment tax?

Mr. GOHMERT. That would be the tax.

Mr. DANIEL E. LUNGREN of California. I believe it's not only on wheelchairs. As someone who recently, well, 2 years ago, had a new hip replacement, I understand that I was lucky I had it then because under this bill, a hip replacement, like a wheelchair, would be considered a piece of medical equipment and there would be a tax placed on that. So for the privilege of being injured in some way and then receiving medical attention requiring a piece of medical equipment, you get the indignity of having a tax placed on you. Now I don't know what kind of a tax you call that. It's not a comfort tax. It's not a sin tax.

Do you remember when we used to call these taxes on cigarettes and alcohol ''sin tax'' because they were supposedly aimed at vices that people had? But it makes very little sense.

And here is the other thing. I had the tele-town hall the other night, and one of the people on the line said, well, why don't you just have a government program and why not just do it through the Medicaid system; expand it for other people to have it in the Medicaid system. And I said to her, well, how would we pay for it? Well, we just pay for it through taxes. And so I was reminded of that great quote by the French economist, Frederic Bastiat, who said many years ago that the state is that great fictitious entity by which everyone seeks to live at the expense of everyone else. Now what he was saying is when we create in our argumentation the idea of ''state'' without understanding what we're talking about, it is easy to say, well, the state can take care of it, or we'll just tax for it; where the suggestion is that somehow that comes from somewhere else. And if you got it down to the real individual level and say, at what point do I have a right to say to you that I can reach into your pocket and take money from your pocket to pay for something I want done?

Now I think we would all agree that there are those who can't help themselves, that we want to create some sort of safety net. But if the idea that we are going to have larger and larger percentages of the population have their needs or wants taken care of by the government because it doesn't cost them anything, at some point in time, we are going to reach that point of which Margaret Thatcher spoke, when she said, the problem with socialism is pretty soon you run out of other people's money. And it's even more than that, because if you corrupt our system such that people forget to, well, people no longer understand how you generate wealth, rather than just redistribute wealth, you essentially create less wealth, you essentially put limitations that otherwise would not exist on creating new wealth that then can be utilized for individuals and their lives and, yes, to support government.

I think that is what we have to continue to remind ourselves, not necessarily remind our constituents, but remind ourselves because we are here making these decisions, that just as Ronald Reagan said, freedom is never free, meaning that we always have to have a commitment towards freedom on a military sense and people that would sacrifice, freedom is not automatically free in our own country. We have to fight for it all the time, and we have to remind ourselves sometimes that maybe we have to ask more of ourselves individually, in our own families, in our churches and in our voluntary associations to do more. And we ask more of ourselves and less of government, and then determine exactly those areas where we help people who truly can't help themselves and make sure that we have a true undergirding of our society to help those people. But don't basically damage the capacity of the American people to use their genius, use their creativity and use their dedication to try and utilize the talents God gave them.

Mr. GOHMERT. If the gentleman would yield, we have no better example

of just what the gentleman is talking about than the pilgrims. There's a marvelous, huge mural down the hall in the Rotunda of the pilgrims having a prayer meeting with the Bible open to the beginning of the New Testament. And I know the gentleman from California's heart, and I know his Christian faith, and I know there are many of Christian faith here, and we don't try to push our religious beliefs on others, but you have to recognize what a part of our heritage they are.

Now, the pilgrims, being Christians, signed a compact, an agreement among themselves, because they thought we want liberty for everybody, but we're going to give that up, put that in a common pot, we're going to all own the land together, we're going to all bring into the common storehouse, and then we're going to divide equally.

Mr. DANIEL E. LUNGREN of California. How well did that work?

Mr. GOHMERT. It didn't work out so well. The first winter, nearly half of them starved to death. And as the gentleman from California points out, they came up with this incredible ability of the people in America to come up and innovate. They came up with this great idea. They said, okay, we nearly starved half the people out. What we're going to do from now on is we're going to divide the property up and give everybody their own private property, and then everybody works their own property; you're responsible for your own upkeep, and if you have some left over, it's up to you. You can give it away, you can sell it, you can trade it or whatever. Remarkably, that's where the liberties we derive came from. And when Jefferson said the natural course or progress of things is for liberty to yield and government gain ground, he knew what he was talking about. He knew our history.

Mr. DANIEL E. LUNGREN of California. It sounds as if they were talking about freedom or liberty with responsibility.

Mr. GOHMERT. That's it.

Mr. DANIEL E. LUNGREN of California. And I think we need to talk about both ends of it. If we are going to be a free people, we have to be a responsible people. If we are going to be a people who cherish freedom, we have to be a people who cherish responsibility. And we must ask of ourselves, each and every one of us, to be responsible in our actions, to understand there is something of the common good that requires something of all of us, but that if we, in fact, mistake that notion or misinterpret that notion such that we think that no longer are individuals free, and that only important questions can be decided by the Federal Government, and in the Federal context only by the Supreme Court, what we are doing is not only becoming dependent on others, in this case government, but we are undercutting the tremendous, as I say, vitality that this country has always had. And so we're not only cheating ourselves, but we're cheating everybody else, as well.

I think that every once in a while it is good for us to have a conversation on this floor about, some would say, huge concepts of freedom. I would say essential concepts of freedom, foundational concepts such as freedom, freedom which is spelled out in the Constitution and the Declaration of Independence.

And so, I would just hope that as we continue in the last days of this congressional year, and as we look forward to the next congressional year, that we not forget about freedom and that, in fact, as we try and meet the challenges of the present and the future, that freedom be our lodestar.

With that, I yield back the balance of my time.

## WESTERN CIVILIZATION

The SPEAKER pro tempore (Ms. PINGREE of Maine). Under the Speaker's announced policy of January 6, 2009, the gentleman from Iowa (Mr. KING) is recognized for 60 minutes.

Mr. KING of Iowa. Madam Speaker, I appreciate the privilege of being recognized here on the floor of the House of Representatives. As I listened to the dialogue of my colleagues, Mr. LUNGREN of California and Mr. GOHMERT of Texas, I can't help but pick up a little bit where they left off.

I would like to address the situation of freedom, and then I hope to transition it into some other subject matters, all of them related to the subject matter that has been brought up by Mr. LUNGREN, who knows it well; and that is to propose a concept that's going on here that has to do with our western civilization. And as we studied western civilization, and maybe it has become a dirty word among the politically correct left, but it clearly has been a subject matter for hundreds of years in one way or another; and as we have watched what has happened across Europe and compare it to what happens here in the United States, there are those, especially on this side of the aisle, that believe somehow we're an appendage of the modern, forward-thinking, liberated, progressive Europeans who have become a social democracy and in many cases a post-Christian Europe.

I will argue, and I will to greater length, that we are a different country, that we're founded on Christian principles, Judeo-Christian values, and we've learned to assimilate people into this culture, but the foundation of our culture has been the law, the rule of law, and the values that flow from the religious foundation of the people that came here to settle this country. They are the ones that wrote the Declaration, they are the ones that wrote the Constitution, they are the ones that ratified it. And the core of the civilization remains the same.

I want to draw this comparison, this juxtaposition, if I might, Madam Speaker, and that is that in Europe for more than 100 years, they have had socialized medicine. It started in Germany under Otto Von Bismarck. He did so for a political reason. It wasn't necessarily a reason of what was best for the German people, it was how Bismarck was able to expand and strengthen his political base. So he looked out across Germany and decided that if he is going to pacify the people, if he is going to get loyalty there, he was going to make sure that everybody had what they will call free health care in Germany.

And so he, I will say, adeptly, as from a political perspective, was successful in passing legislation that established socialized medicine in Germany more than 100 years ago. And that was contagious enough that it was adopted by, by now every country in that part of the world. And the country that I pay the most attention to and look back on historically has been the experience in the United Kingdom. They had a higher level of freedom when they went into World War II. And of course, they were looking at their enemy more in the eye than we were. And Winston Churchill helped lead them through that time. But in the aftermath of the all-out effort to expend every resource they had to preserve the British Empire, they also saw their economy with too much of a burden on it, and it was collapsing at the end of World War II. There were all kinds of stresses on it.

You can imagine, Madam Speaker, all the rebuilding that had to take place, the restructure of government, the lessons learned and the repositioning of assets, resources and conviction that takes place in a time of war. If you win the war, you don't undergo quite the changes as you do if you lose the war. But Great Britain was afraid their economy would collapse. And among the things that they did, just as we have knee-jerk reacted to an economic downward spiral here in this country and passed TARP legislation, $787 billion in an economic stimulus plan—and I say ''we'' as this Congress, and I opposed those things—just as this administration, it actually started in the previous administration, began nationalizing huge economic entities in America, three large investment banks, AIG, Fannie Mae, Freddie Mac, General Motors, Chrysler, about one-third of the private sector profits in the United States nationalized because we have fear of failure. Well, the British had fear of failure in the aftermath of World War II.

And so one of the things they did to try to provide a safety net for people would be to adopt a national health care act similar to Bismarck's national health care act in Germany. And that's socialized medicine. They passed it in 1948.

I sat reading through the Colliers magazines, the yellowed copies of that just a few years ago, that had been saved for me by a World War II veteran that had watched this national health care in the United Kingdom pass. And the things that they predicted that would happen before its passage and

implementation into law were the ones that came to pass within a year. The doctor said, we're going to have long lines, and I won't be able to treat all the patients with the care and the attention that I have in the past.

When the government sets the fee that you get for doing the work, and the people that are receiving those health care benefits don't have to pay for them, there's an overutilization of the service. It's human nature. It's kind of like former chairman of the Ways and Means Committee, Bill Thomas, said of the people that utilize Medicare the most in America. He said, well, the people there, they wake up in the morning and feel good, and since it doesn't cost anything, they go to the doctor to find out why. Well, some of that happened in Great Britain. And it has happened in Canada. It has happened all over Europe and most of the industrialized world except in the United States. Government supplanted one of the responsibilities of the people; and there was less reason for people to be cohesive and hold themselves together. If you look across Europe, this post-Christian Europe that I've talked about, the churches that were built when there was a dynamic faithful force, and I will say prior to, during and post the industrial revolution, if you look at just the churches, just the edifices, the gothic architecture that's there, you can see there was a powerful force. That force has been significantly diminished. And I will argue that it has been diminished in a real part because the role of our faith, the role of our families, the role of communities pulling together, the nucleus of which were the places of worship, the churches, has been replaced by the government.

□ 1645

So if the government can provide you with all the health care that you need and your own personalized health insurance premium, which is advocated by the people on this side of the aisle—on the opposite side of the aisle, I want to make that clear for the record, Madam Speaker. If government can take care of rent subsidy and heat subsidy and give you a childcare credit—so pay you for the children that you have—and if the government can pay you for the earned income tax credit so if you don't make enough money they cut you a check for that, if the government can replace all that the churches did with the check that comes unwillingly from the taxpayer, when all of that happens, then people slow down their attendance or they stop going to church. They forget about the core of their faith. They forget about the reason of the blessings that we have, and slowly, society falls back to a dependency class that settles upon the government that has replaced the need that the churches were fulfilling out of the willing giving of their membership.

I believe that one of the reasons for post-Christian Europe is because they have replaced the responsibilities and the duties and the activities and the services that come willingly from the churches with a service that comes unwillingly from the taxpayers but guaranteed as an entitlement to the people. That is what we're poised to do in this country because the people on this side want to create a dependency class. If they can create a dependency class, then their goal is to expand the political class. That is the short version of the subject matter that I think was very well raised and articulated by the gentleman who spoke ahead of me, Mr. LUNGREN.

I would also ask my friend from Texas, Judge GOHMERT, if he was able to get everything off of his heart before he goes back to where his heart really is, which is in Texas.

So I yield as much time as he may consume to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. I thank my friend from Iowa so very much.

The gentleman from Iowa makes such a great point; we think we're the be all and end all in this Congress. And as I said in here last week over the debate about the death tax, we have the power to pry money from someone's wallet when they're lying cold and dead. We have the power to do that; we do not have the moral authority to do that.

But we even hear people, as they did last week and have in previous debates, who play on some of our Christian faith and say, well, it sounds like the Christian thing to do would be for our government to help everybody, take care of everybody. But you could go throughout the New Testament and you will never find one place where Jesus ever said, Go ye, therefore, take from other people and give to someone else. He said, You do it. With your own money, what you've earned, what you've made, you take and you give from your own self. Don't go take somebody else's money just because you've got the power. You don't have the moral authority to do that. Do it yourself. And there is a great deal of blessing derived from individuals doing that and helping others, but it is tyranny when you use the power and abuse the moral authority and take from other people to do what you, yourself, want to do.

When you look at the bills we've been passing, including the bill passed today, ''financial reform'' so-called, it's not financial reform. It's like the health care bill wasn't a health care bill. It is a government takeover. I hear friends and very scholarly people say, well, this is a takeover by the government of one-sixth of the economy, of the health care. But the truth is, it's not even that. It's more than that. Because if you go to the trouble to try to get through the massive bill that's been brought here, it's about taking over and legislating and regulating restaurants. That's not health care. It's legislating vending machines. It goes into all kinds of things.

I read a provision where it is required that the Secretary of Health and Human Services shall do a study of businesses. Study of businesses? It goes on to tell them what you've got to study for. You've got to make sure that certain businesses are making good decisions that will allow them to stay solvent. Do you want Washington bureaucrats coming to your business in Iowa—I know they don't in east Texas—and sitting down with you that has never balanced a budget, never made any money on their own, have been living on government welfare, and then they're going to tell you you think you have too much inventory? What do you know about inventory? You've never been in this business.

It is kind of like the car czar and all these people that were appointed by the President, unaccountable to anybody. They made laws. They subverted the bankruptcy code. They just ignored the Constitution, the laws, and this Congress did nothing about it, let it go. The Supreme Court did nothing about it, let it go. They just supplanted all of those things and dictated things from behind.

Mr. KING of Iowa. If the gentleman will briefly yield, and reclaiming my time, I would make this point, that the bankruptcy courts through which the auto makers were pushed, when I listened to the witnesses that were before our Judiciary Committee and point-blanked them on this question? Do you believe that there was anything that changed throughout the course of the bankruptcy court as a result of the testimony or evidence that was presented to it, or was the deal, the proposal that was presented by the administration, as an investor in the car makers, did that proposal remain in tact all the way through the courts, or were the judgment of the courts applied to the final product? Their answer was, without equivocation, no. The deal was the deal, and the courts essentially rubber-stamped the deal. That's the testimony that I heard, but it is, of course, summarized in a nutshell for the benefit of this dialog.

I again yield to the gentleman from Texas.

Mr. GOHMERT. I appreciate that so much.

The fact is, even on the health care bill, when the President had his town hall lady named Pam Stern—and I went and watched the video and typed this up myself—but she had pointed out she had a mother that was approaching 100 years old and she needed a pacemaker in order to have the other things she needed. And apparently the arrhythmia specialist—he had not met her—decided nobody at age 99 should need a pacemaker, but then her own doctor recommended he meet her. So he met Pam Stern's mother and said, Wow, this lady is alive and going strong. She deserves a pacemaker. So he put it in, and she is 105 right now and going strong.

And Pam Stern put this question, she said, Outside the medical criteria for

prolonging life for somebody who is elderly, is there any consideration that could be given for a certain spirit, a certain joy of living, quality of life, or is it just a medical cutoff at a certain age? And the President went round and round, Well, we're not going to solve every difficult problem in terms of end-of-life care, and he goes on and beats around the bush. And he finishes his answer by saying, Well, at least we can let doctors know and your mom know that, you know what, maybe this isn't going to help. Maybe you're better off not having the surgery but taking a painkiller. This is the government saying, you know, despite the Constitution talking about securing the blessings of liberty to ourselves and our posterity, this is the government saying not only are we not going to give you liberty, we're not going to give you what you need to have life. That is a government that, unless you committed a heinous crime, the government has no right to tell you that you can't get what you need to live of your own volition. And that is such a mistake.

And we think we can do it on our own. The gentleman before, our friend from California (Mr. LUNGREN) and our friend from Iowa is so articulate about these things. But when you go back to our founding, you see that the Founders knew very well they could not do it within themselves. They hired George Washington to fight the revolution for them, and it went until 1783.

Everybody knows about July 4, 1776, when the Declaration of Independence was made public. But he fought on as Commander, and he did something nobody in the history of mankind has ever done. He won a revolution, had the military under his control, could have been king, Caesar, emperor, generalissimo, czar—could have been ''the'' czar of America, but he did something, as depicted in a mural down the hall.

He came into the Continental Congress with his outstretched hand, depicted in that mural, with his resignation. He said, Here is all the power back, because they passed a bill December 27, 1776, giving him basically all the power. They had to make contracts to enter whatever agreements, pay whatever they needed to pay, but there he was, 1783, tendering it all back. And in his own words—called the founder of our country—and actually, the whole resignation was so profound it was printed up.

They got the resignation, printed it, and distributed it throughout the country because this was such an incredible document. This is what he thought; not the arrogance of people that say we know all. We do all. People in America are too stupid to do for themselves. They have to trust us in government because they're not smart enough. This is what Washington said—and this is not the whole thing because it would take too much time perhaps—but he said, ''I now make it my earnest prayer''—he thought it was okay to pray like that in public—''that God would have you in the state over which you preside in His holy protection.''

He goes on and he says, to entertain brotherly affection and love for one another, for their fellow citizens of the United States, particularly for their brethren who served in the field, and finally, ''that He would most graciously be pleased to dispose us all to do justice, to love mercy, to demean ourselves with charity, humility, and pacific temper of mind which were the characteristics of the Divine Author of our blessed religion''—he thought there was a blessed religion here and a divine author that he knew—''and without an humble imitation of whose example in these things, we can never hope to have a happy nation.'' He signed it, ''I have the honor to be, with great respect and esteem, Your Excellency's most obedient humble servant, George Washington.''

And then, of course, for 4 years the Articles of Confederation were created after Washington left. That was too loose of a web. The country was falling apart. The military tries to get Washington to come back and preside as a ruler, a king, and he refused to have any part of it. In 1787, they finally talk him into coming back because they convinced him truthfully that the 13 colonies will not come back unless George Washington agrees to come back. He comes back for nearly 5 weeks in Philadelphia, windows covered, meeting there privately, trying to come up with a constitution that would hold, something that would work, something that they could be proud of. They had met nearly 5 weeks and accomplished basically nothing.

And this is just the last point I wanted to share. I head back every weekend to my beloved east Texas, and will shortly, but after nearly 5 weeks, Benjamin Franklin stands up, recognized by President Washington, President of the Constitutional Convention—and most people that know history know that Benjamin Franklin did sow some wild oats, he did, and he did in France and England and somewhat here. But by this point he's 80 years old. He's about 2½ years away from meeting his maker, meeting the ultimate judge. He is just as brilliant, just as witty, charming, a real genius, but he has more thoughts toward the eternal.

And so after Washington recognizes him, he stands up—and we have the whole thing because James Madison, as Secretary, recorded it all—and he went through and said, you know, we've been meeting for nearly 5 weeks. We have more noes than ayes on most of these issues. We've accomplished nothing. And these are his words, as recorded by James Madison. ''In this situation of this assembly, groping as it were in the dark to find political truth and scarce able to distinguish it when presented to us, how has it happened, sir, that we have not hitherto once thought of humbly applying to the Father of Lights to illuminate understanding? In the beginning contest with Great Britain, when we were sensible of danger, we had daily prayer in this room for the Divine protection.''

Benjamin Franklin goes on and says, ''Our prayers, sir, were heard and they were graciously answered. All of us who are engaged in this struggle must have observed frequent instances of a superintending Providence in our favor. To that kind of Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national felicity. And have we now forgotten that powerful friend, or do we imagine that we no longer need his assistance?''

Franklin goes on and he says, ''I have lived, sir, a long time. And the longer I live, the more convincing proofs I see of this truth: God governs in the affairs of men, and if a sparrow cannot fall to the ground without his notice, is it probable that an empire can rise without his aid? We have been assured, sir, in the sacred writing, that except the Lord build the house, they labor in vain that build it.''

□ 1700

Franklin said, ''I firmly believe this; and I also believe that, without His concurring aid, we shall succeed in this political building no better than the builders of Babel. We shall be divided by our little, partial local interests, our projects will be confounded, and we ourselves shall become a reproach and a byword down to future ages.''

He went on and said, ''I therefore beg leave to move that henceforth prayers of heaven imploring the assistance of heaven and its blessings on our deliberations be held in this assembly every morning.''

He knew who governed in the affairs of men. They began unanimously having prayer. They had it every day as he moved, and it resulted in the Constitution that we still utilize today for those who still utilize it.

I would recommend, as I know my friend has so many times, for those who have not read the Constitution or who have not read it recently, read it. I love the way it ends: ''Done in convention, by the unanimous consent of the States present, the 17th day of September, in the year of Our Lord, One Thousand Seven Hundred Eighty-Seven.''

A great way to end a great document.

I thank you and I yield back to my friend from Iowa.

Mr. KING of Iowa. I thank the gentleman from Texas.

It is interesting to me, Madam Speaker, to listen to this presentation and to think about the impact of the core of the faith on our Founding Fathers. Clearly, Ben Franklin was a leader of them. Part of me is a little curious about what it would have been like to have heard his entire confession, but it was interesting to hear the statement that he made.

I'd reflect also that, for 60 years, the Founding Fathers and their successors

and the leaders of this Nation and others would come in, and they went to church in this very Capitol building. For 60 years, they worshiped in this Capitol building on a regular basis.

The first Black man to speak in the United States House of Representatives was a pastor who came here right at the end of the Civil War to speak about the passage of the 13th and 14th and 15th Amendments.

As I watch things transition here in the House, I'd like to say also, as another word to add to this discussion, that George Washington's Thanksgiving proclamation said—and it was a prayer—God grant this Nation the degree of prosperity which he alone knows to be best.

I think that's consistent with the presentation from the gentleman from Texas.

You know, this isn't exclusively about how we make a lot of money. It isn't exactly how we are able to turn this economy around and to put a lot of cash into people's pockets. There's something more important than this. I've long said that, if I have to choose between an education without a moral foundation and a moral education without the best academic foundation, I'm going to take the moral education. That's what I want my children to learn, and that's what I want my grandchildren to learn, and that's what I want this Nation to learn.

There is something about prosperity, but I look back a decade or more ago, and there was a very well-educated Unabomber who didn't have a moral foundation. We have smart people with good educations and not moral foundations. They are destructive with their educations, their academics and their brilliance. We want a society where we have the opportunity to get back to the point where we don't lock our doors anymore.

Madam Speaker, did you ever think, when you forget your car keys and you can't get in and you're standing out there and it's January and 20 below, why it is your car is locked? Well, it's because of the people in society who don't have a moral foundation. It's because of the thieves. Why do you lock your house? It's the same reason. It's not just simply endemic that we have to build cars with keys or houses with locks or dead bolts and bars across them. We do that because it's a sign of the erosion in our moral foundation. There are still places in America where people don't lock their doors. There's a place in America where I live.

Yet, today, standing on the streets of Washington, D.C., it happened to me, and it wouldn't have been hard for many others to have experienced the same thing. When an ambulance goes by, people on the street will stop talking because the siren is too loud, and some of them are irritated because the siren has interrupted their conversations. That's the level of compassion that emanates from the curb sometimes in the cities of America to the ambulance, itself. Where I live, if an ambulance goes by my house, we already know who is inside, and we know who the family members are who are reached by it. That's that neighborhood component. Those neighborhoods exist within the cities, too, Madam Speaker. I don't mean to imply that they don't.

When people are in a transitional stage and the more there are and the more it erodes the moral foundation, the more we need to take our resources to defend ourselves against the people who would steal our property and who would assault our very families and individuals. That's the lack of a moral foundation. If we get that right, then at least, in theory, we won't need nearly as much for, let's say, the police force, which could go out and serve papers and could do those things. They won't need to be occupied in fighting off violence all the time as they are.

THE SUPREME COURT AND THE DETAINEE TREATMENT ACT

Now we have a situation here that is also of great concern. Madam Speaker, yesterday, Mr. GOHMERT and I and a number of others did a press conference over in front of the Supreme Court building. We did that to take up the issue of Guantanamo Bay—the Gitmo detainees, the enemy combatants, the radical Islamist jihadists, who have declared war against the United States, who have committed their training and their lives and their assets and their resources into killing us, and who have succeeded to a significant level, particularly on September 11, 2001.

I've been to the locations of ground zero in New York and at the Pentagon here in Washington, D.C., and I've seen the impact of the attacks on our Nation. I've been down to Guantanamo Bay, Madam Speaker, and I've talked with and have observed the detainees down there. We've had over 800 detained in Guantanamo Bay. We tried to get as many of them released and sent back to their home countries as we could. We still boiled it down to, at that time, about 241 enemy combatants, radical Islamist jihadists—the worst of the worst—who didn't have a place to go. We didn't have a process to deal with them. They were committing acts of war against the United States. At least that's the evidence that we have.

So President Bush started this fairly early in the process, and Congress passed legislation called the Detainee Treatment Act, which set up military tribunals to try these enemy combatants, is what they were called if I remember correctly in legislation, and established those parameters—all consistent within internationally set standards, all consistent within Geneva Convention standards.

Then they also set up an appeals process in the event that an individual who was to be tried or who was tried under the Detainee Treatment Act were to appeal that decision or to appeal even being tried before the Detainee Treatment Act, their appeals would go to the U.S. Circuit Court of D.C., the District of Columbia Court of Appeals.

That's what happened in the Hamdan case. The Hamdan case is a landmark precedent case. That's the case of Osama bin Laden's chauffeur, who argued that he should have some constitutional rights and that the limitations that were set by the Detainee Treatment Act were too broad. So he took the case—his attorneys—and I don't know that these were pro bono attorneys, but I know there are dozens—and I'll say—scores of pro bono attorneys who are seeking to establish new precedents. They took the case to the D.C. Circuit, which upheld the Detainee Treatment Act that had been passed by Congress, signed by President Bush. They upheld it to the letter in the D.C. Circuit.

The Supreme Court, by the way, had been forbidden from hearing a case which came out of the Detainee Treatment Act because, under article III, section 2 of the Constitution, this Congress stripped that authority from any court other than from the District of Columbia Circuit. Even though the D.C. Circuit upheld the letters of the law and the content of the statute, after the decision of the D.C. Circuit and outside of the bounds of the law, itself, of the article III, section 2 language which stripped the Supreme Court of jurisdiction, the Supreme Court reached over and heard the case anyway. They got outside their zone. They went across the fence, and decided they were going to graze in the pasture that was set aside exclusively for the D.C. Circuit. They overturned some components of the Detainee Treatment Act.

So we came back to this Congress again, and I argued we should have ignored the court because they didn't have jurisdiction to hear the case and that Congress had said so, and it's clearly a component in the Constitution—article III, section 2 stripping—but the Supreme Court heard the case anyway, and it came to a decision. Here is the article III, section 2 language that was designed to prohibit the Supreme Court:

It says, ''In all the other cases before mentioned''—that would include the Hamdan case, and I'm quoting from the Constitution now again—''the Supreme Court shall have appellate jurisdiction both as to law and to fact—'' so far, the Supreme Court would be okay, Madam Speaker, but this is the part to pay attention to—''with such exceptions and under such regulations as the Congress shall make.'' Congress made exceptions and Congress made regulations. Congress essentially forbid the Supreme Court from hearing such a case on the Detainee Treatment Act. They did so anyway.

I read that decision through carefully—about this thick, Madam Speaker—and it took a while. The case came out on a Thursday. I got my hands on

the printed document on Friday. On Saturday morning, I went out. This must have been June because I remember sitting in my backyard, reading carefully down through this Supreme Court decision called Hamdan. I marked up the margins with all of my opinions. When I got through that stack of paper, it was a little thicker because it was wrinkled up a little bit, and it always swells a little when you write on it.

I looked up at the sky, and I thought, My gosh. The Supreme Court has defied Congress and the Constitution. They heard a case they didn't have any business hearing, and now they've issued this decision, this opinion, which as I said is all it was, which is now going to redirect Congress to go back and to redefine the Detainee Treatment Act.

So my position was that Congress should simply pass a resolution that we restate the Detainee Treatment Act and ignore the Supreme Court because they were outside the bounds of the jurisdiction that's offered to them in the Constitution.

I would agree with Justice Scalia that the cases of article III, section 2 stripping are legion. That was the word that Justice Scalia used. Those cases are legion. Yet, by the time I had analyzed the case—and not that I had the leverage that was going to turn this thing around the other way—the Chairs of the Judiciary Committee in the House and the Senate and the President of the United States, President Bush, all had conceded to the Supreme Court, and had said, Now we are going to comply.

So, at that point, it was too late to put the toothpaste back in the tube. It was too late to reel this back in again and to cast it out and get it right. So Congress came back and passed new legislation, new legislation on the heels of the Detainee Treatment Act which set up enemy combatant review tribunals. Then it was adjusted for the decision of the Supreme Court. We tried again. Along came the Boumediene case. Then it narrowed somewhat our ability under those decisions of the Supreme Court if we conceded those positions which the majority of Members of Congress did and the administration did, but it left intact the ability under military tribunals to try these detainees, these enemy combatants, these radical jihadists, who we are faced with.

So we continued forward then with the development of Guantanamo Bay, with the housing of these detainees down at Guantanamo Bay. We had built the courtrooms. We had built up secure rooms and had set up a place where the family members could observe the trials and where the press could observe the trials. There was a microphone that projected to them with a bit of a delay and an officer sitting there with his ear tuned to anything that came out which would be classified/secret information that could put the people of the United States in jeopardy. He was the person who could put his finger on the mute button of that microphone and could delay things so that the observing rooms could be cleared of reporters and family and so that we could go to the classified types of information that would be part of the trial.

The facilities down at Guantanamo Bay are perfectly suited for the task at hand of trying these enemy combatants. They were built for that. There are not any facilities anywhere in the world which are custom-built to try enemy combatants other than Guantanamo Bay down in Cuba.

I went down and visited the place one weekend shortly before Easter of this year. I would say that that location might be the best place you could be if you were going to be someone who is an enemy combatant, which is similar to being a prisoner of war. I don't believe there have been prisoners of war, prisoners who have been picked up in armed conflicts, who have been treated as well as the detainees at Guantanamo Bay.

□ 1715

I don't know how they could be treated as good as the detainees at Guantanamo Bay. They are living down there in private cells. They each have their own room. There are some exceptions, but essentially they each have their own room. They have got their bunk and their personal possessions. They each get their own personal Koran. The Koran comes to them in a zip-locked bag all carefully packaged up so that no, and I put this in quotes, no ''infidel'' has touched the Koran and desecrated it by the hand of an infidel.

They get their own sterile Koran delivered to them. They get a prayer rug that's embroidered, fancier than anything in my house and fancier than anything I have see in anybody's house. They get their own personal little skull cap or prayer cap that they wear.

They get a menu to choose three squares a day, nine items, all of them approved for Islamic meals. They have a little arrow in the bottom of every cell or maybe under the mattress that points east to Mecca, wherever that's dialed in on the compass of the world. As you move around, it's a little bit different direction to point to Mecca.

You will notice if you go, Madam Speaker, into the Middle East, and you look up on the ceiling of a hotel room, there will often be an arrow there. That's the arrow for which direction to Mecca, which direction to pray, if you are a Muslim. They have an arrow in each of the cells that tell them which direction to pray.

The thermostat is set at 75 degrees in their air conditioned, Caribbean prison, because they claim that 75 degrees is their cultural temperature. I would suggest that it ranges up over 140 degrees myself, but 75 degrees, they claim, is their cultural temperature. That's the climate control that they get.

They are not even exposed to the elements unless they volunteer to go out. They are in that 82- or 83-degree temperature that is very stable, especially during the day in the Caribbean. It seldom goes down below 60 degrees at night. They are in a perfectly controlled environment in the best location you could ask for to be able to have an outdoors environment.

The attacks on Americans in Guantanamo Bay average about 20 a day. About half of those attacks are these detainees throwing human waste in the faces of our mostly Navy guards. These guards are trained to restrain themselves from retaliation, and they take pride in restraining themselves from retaliation. That's about 10 times a day they are throwing human waste in the faces or were trying to rub it in the faces of our guards.

The other 10 times a day, out of the 20 assaults, come down to physical assaults with their cuffs or their chains, an assault, or they are trying to physically injure the guards, about 20 attacks a day. Now if that happens in a maximum security prison in the United States, they will go into solitary confinement. There will be charges brought against them.

If found guilty—and of course if they're guilty, we likely will find them guilty—then these prisoners in American prisons would get an extended stay in their maximum security prison. They would watch their diet be dialed down to fewer calories per day and they would go into solitary confinement for a period of time.

That, Madam Speaker, that is what happens in an American prison. Down at Guantanamo Bay, with these worst of the worst, the most vile American haters, the planner and the planners of the September 11 assault on the United States, the worst thing we can do to them, if they should get a guard down and injure that guard and rub human waste into his face and perhaps nearly strangle the guard, the worst thing we can do to Khalid Sheikh Mohammed if that happens is, we reduce his outdoor exercise time down to 2 hours a day. It's the worst penalty we can do.

They get their air-conditioned cell, their private room. They get a menu that's designed to fit their religious beliefs. They get their Koran and their skull cap and they get their rug. Oh, and by the way, out of the 800 or so that were down at Guantanamo Bay, one of them asked for not a Koran but a Bible. When the word got out that there was an individual there who wanted a Bible, the ability to keep order down at Guantanamo Bay became very precarious. There was going to be such a rejection of the idea that there would be a Bible in the hands of someone down there, that they denied this inmate a Bible.

We are promoting religious freedom to the people that are there and giving them all of the trappings that they require, with arrows to pray towards, and Korans, and skull caps, and prayer

rugs. But if there is a Christian in the mix, they are denied their equal rights, their right to faith and religion.

The temperature is set for the cultural temperature, at 75. That's Guantanamo Bay. Perfectly set up, though, to try these enemy combatants, to house them. Some of them need to be locked up for life, and some of them need to be executed.

We can't get there because the world has said we think that you were hard on these prisoners down there. So we are adjusting American policy because of critics in places like Europe, critics that are international, let's see, what do we have, Amnesty International, and other global Web sites that allege the United States is cruel and inhuman.

No one could have been any less cruel or any more human in dealing with these detainees than the United States has. I have gone there to see it, Madam Speaker, and it is a place where you would want to be if you had to be locked up.

Now, because of the politics of this, the Obama administration has decided that they have, the President, 2 days after he was inaugurated on January 22 of 2009, issued an executive order that said we are going to close Guantanamo Bay. It's 7 pages long, it's written in English, but it's posted on the bulletin board down in Guantanamo Bay in Arabic and in English, a bulletin board cover with Plexiglass in the middle of the commons area, right over by their foosball table.

So they can take a break from their foosball and read the promise from the President that they are not going to be there a day after January 22, 2010. I don't know if the President can keep that promise, but that's certainly the promise that's made to the detainees.

That number has been reduced a little bit. We had the Uyghurs, some of them were sent to Bermuda. There have been others that have been infiltrated back out to the rest of the world.

Madam Speaker, I want to make this point that of those who were released, and the numbers of those who were released is a number greater than 500 by the Bush administration, there is about a 1 in 7 incidence of recidivism. Of those that were released—these were not the worst of the worst that were released, these were the best of the worst that were released—it was more than 500.

That more than 500 went back around the world and at least one out of seven went back and began to plot against or attack the United States. That's a lousy recidivism rate. Some will say, well, we have a greater rate of that when we release people from the prisons in the United States.

We have a closer eye we keep on them too, Madam Speaker. At least in America we have a police force out there that when people break the law we have a tendency to go find out who they are, where they live, and pick them up and try them again, and lock them up again. But when you turn somebody loose in the world, and they go back into the mountains of Pakistan or Afghanistan, and they train and plot to attack Americans, it's kind of hard to catch them a second time.

If we do that with one out of seven, then what happens with the worst of the worst? What happens with these 241 that are now down around 220. If they get released into the world, these are the most dedicated killers of freedom-loving people that exist on the planet, at least in incarceration. They are going to make common cause with the others that they can find around the world, and they will turn around and attack the United States.

It is inevitable, and the equation that the President of the United States and Eric Holder, the attorney general, needs to understand, Madam Speaker, is, that of these 221 detainees that they are looking desperately to try to find a way to bring them to the United States, or at least a large share of them to the United States, if they are adjudicated in civilian courts, as they propose will happen with KSM, Khalid Sheikh Mohammed, whom I have laid eyes on and watched him operate and read his documents—he blamed the attacks of September 11, 2001, on us, Madam Speaker. He wrote that in his defense document. You would think in his defense document he would try to defend himself. Instead, he attacked us.

He said, it's your own fault, America. We told you that we hate you. We declared war on you. We said we were going to come and kill you. You failed to defend yourselves from us, and so, therefore, it's your fault that 3,000 Americans were killed September 11. You had to know we were coming because we said we would, and you didn't defend yourselves. That's Khalid Sheikh Mohammed. That's how evil he is.

Now the President has said, and Eric Holder has said, that we will feel better when they are prosecuted in the United States and when they are executed. I will say the President and the attorney general have repeatedly said that KSM will be constricted, and I will say it opens up a whole array of new appeals to think that KSM, while it would be announced that he would be convicted and implied, at least, that he would be executed, by the President of the United States, who is a lawyer, a Harvard lawyer, an instructor of constitutional law at the University of Chicago, even though he was an adjunct professor, that's the announcement from the President of the United States and the Attorney General that says essentially this, that some say it's the Old West story. I say it's a Mark Twain story; first we will hang them, then we will try them.

I would point your attention, Madam Speaker, to a writing by Mark Twain called ''Roughing It,'' sometime about the turn or the middle of the 19th century Mark Twain wrote a story, ''Roughing It,'' about a Captain Ned Blakely. Ned Blakely, who sailed off to the Chinches Islands to get a load of whatever the product was there.

As he sailed into the bay, he had the meanest man on the islands come aboard, named Bill Noakes. They had a big fight, and Captain Ned Blakely won that. Bill Noakes came back another time, they had another big fight. Even though Captain Blakely won that over a period of time, this mean Bill Noakes shot and killed the first mate of Captain Blakely.

The first mate happened to be a Black man, a Black man whom had great favor of Captain Ned Blakely, a Black man who was trying to get away from the confrontation, was actually running, and he was chased down and shot to death by Bill Noakes in the narrative by Mark Twain. So no one wanted to take on Bill Noakes. He was too mean out on the island. There were about a dozen ship's captains that were part of what we would say would be the law in that era. Ned Blakely went and arrested him and planned to hang him in the morning.

When the other captains found out about it, they came to see Ned Blakely, Captain Blakely, and said to him, You can't hang this man; he has to have a trial. Captain Blakely said, Fine, let's have the trial. I will help you with the trial. I will help you prosecute the man. How soon do you think you could do it? They said, Well, we think we could have the trial in the morning.

But Captain Blakely said, Well, I am going to be a little busy in the morning with the hanging and the burying, so let's do the trial in the afternoon. That's how Mark Twain described this. First we will hang him, then we will try him. Actually, he said, First we will hang him, then we will bury him, then we will try him.

That's about the message that came from the President of the United States and the Attorney General of the United States. He essentially declared Khalid Sheikh Mohammed and his four other compatriots to be guilty and subject to the death penalty, and predicted that they will be convicted and executed, an unbelievable prediction for the President of the United States and the Attorney General of the United States, to take that position.

We are doing what? We are bringing these Gitmo detainees to the United States, not because there is any logical reason to do this; there is no rational reason to bring these enemy combatants to U.S. soil. There is no constitutional reason, Madam Speaker, there is no statutory reason, there is no rational, logical reason. There is no strategic or tactical reason. We don't get more safety with bringing them here, we don't get the odds of a conviction with bringing them here.

KSM has confessed his own guilt and asked for a death penalty. As Scully Simpson said yesterday, take the plea, attorney general, take the plea, Mr. President. If he wants to plead guilty

and submit himself to the death penalty, why would you bring them to the United States and bring them within six blocks of Ground Zero in New York City and subject them to the circus of a civilian court? We know what that looks like. O. J. Simpson's circus court comes to mind, that media circus that would come.

For what purpose? Not because it's constitutional, statutory, logical, reasonable or tactical, none of that. Madam Speaker maybe, just maybe, if we want to be charitable we could say maybe the President and the Attorney General would want to demonstrate to the world that America has a legitimate civilian court and that equal justice will be provided under the law for anyone on the entire planet, not just people that have set foot in the United States, our citizens of the United States or our Americans.

Madam Speaker, if that is the motivation for the President and the Attorney General to express to the world that we are equal justice under the law and an open judicial system, that we have the courage and the confidence and the wherewithal to try these enemy combatants in a civilian court, so now the rest of the world is going to like us, because we have done something that isn't really smart, and may be the most colossal blunder in this administration? It could be the most colossal blunder of many administrations, Madam Speaker.

□ 1730

All for what? All to ask the rest of the world to like us, to trust us, to respect our judicial system? Could that be the reason? And if it is the reason, and it's the only one that seems to be threaded with anything that one could construe as logic in this decision, that it had to be approved by the President and announced by the Attorney General, if the rationale is the rest of the world will lift their criticism of how we've dealt with these enemy combatants if we just bring them out of the military tribunals, this court system, and put them in the civilian court, I will submit that if that were a sound logic and it had any chance of being effective and it would be good for the public relations of the world, they've already messed it up; they've already destroyed any benefit that might come from trying KSM in a civilian trial within six blocks of Ground Zero in New York City because the President of the United States and the Attorney General of the United States have both announced that KSM and his four coconspirators are guilty and that we're going to prove it in an open court, without cameras, but prove it in an open court, and we're going to sentence them to death.

Now how in the world is anybody around the world going to believe that this was an objective decision, that it actually is the result of a court when the verdict is already announced by the President of the United States and the Attorney General?

Madam Speaker, this is self-defeating logic here, and I think that they have actually defeated their own rationale.

I want to, in the moments that are left, just go through some pieces of this rationale so that it goes into the RECORD. And that is this:

The Obama administration is acting dangerously by bringing foreign terrorists to our shores from Guantanamo Bay. This is a direct threat to our national security. And by doing this, the Obama administration is opening us up for another terrorist attack.

You've heard a host of other concerns from my colleagues. I'm the ranking member of the Immigration Subcommittee, and I will focus a little bit on immigration, Madam Speaker. The truth is if we bring these terrorists to U.S. soil, we may not be able to keep them in detention. Even worse, we may not ever be able to deport them. So if we manage to convict these terrorists, which is a question, they may one day become our constituents' new neighbors. And how? Well, because of the confluence of two factors: One of them is the Convention Against Torture, and the other one is the Supreme Court 2001 decision called Zadvydas.

First, the Convention prohibits the return of aliens to countries where they may be tortured. So if we could release any one of these detainees, we would send them back where? We can't send them back now because of that fear. The U.S. Department of Justice regulations implementing the convention, the Convention Against Torture, that is, made no exceptions whatsoever for anyone's activities. Whether they be rapists, murderers, participants in genocide, or terrorists, they're all equally protected. Hundreds of criminals have already received relief from deportation as a result of the Convention Against Torture, and so has an alien involved in the assassination of Anwar Sadat. Osama bin Laden himself could probably frustrate deportation by making a torture claim under this convention. I mean, after all, the more heinous a person's actions and consequently the more hated they are in their home countries, the more likely they are to be subjected to torture, so the stronger is their claim that they couldn't be returned to their home country for fear they would be tortured when they arrive.

So the ability of terrorists to frustrate the deportation process might be tolerable, but if we were certain that we could keep these terrorists detained, that would be the condition by which it would be potentially tolerable. But this may not be the case because section 412 of the PATRIOT Act does wisely provide for the indefinite detention of terrorist aliens, indefinite, regardless of whether they qualify under the Convention Against Torture or whether they have other available relief from removal. However, it's very possible that the intervening Supreme Court will rule this provision unconstitutional and there would go the indefinite detention section under the PATRIOT Act.

In Zadvydas, the Supreme Court ruled that under a different law, aliens who had been admitted to the United States and then ordered removed could not be detained for more than 6 months if for some reason, such as the Convention Against Torture, they could not be removed. In the Zadvydas case, the Supreme Court made a statutory interpretation, but they also put up a warning and said to us that they were interpreting the statute to avoid a serious constitutional threat. So the Court believed that a statute permitting indefinite detention of an alien would raise a serious constitutional problem.

So already, Zadvydas, that decision, has resulted in the release of hundreds of alien criminals into our communities. Jonathan Cohn, the former Deputy Assistant Attorney General, testified, and I quote, that ''the government is now required to release numerous rapists, child molesters, murderers, and other dangerous illegal aliens into our streets. Vicious criminal aliens are now being set free within the U.S.''

It seems incredible that the administration would intentionally bring alien terrorists into the United States knowing that we may never be able to deport them or even detain them on a long-term basis, and that's the immigration component of this argument, Madam Speaker.

This is a very serious decision on the part of the President and the Attorney General. And if allowed to set foot in the United States, it establishes a precedent, a precedent that will be very difficult to reverse. It establishes a precedent that any enemy combatant that we would pick up anywhere in the world may have to be read their Miranda rights. Remember, Madam Speaker, they are reading Miranda rights to enemy combatants in Afghanistan as we speak. They are being asked to pick up battlefield evidence out on the battlefields. It's an entirely different process to prepare for a military tribunal than it is for a civilian prosecution. The chain of evidence and the introduction of hearsay evidence are under different types of rules. And that's for a wise reason because, laying this out, this Congress understood the difference between war and criminal actions. This Congress understood the difference. Our previous President understood the difference. This President seems to believe that this war on terror is fighting a criminal action, not an enemy war on terror action. So it brings forth this idea of bringing these enemy combatants to the United States.

This point needs to be understood, Madam Speaker: Of the 221 or so that might be brought to the U.S., and I reject the idea of allowing any of them to set foot on our soil, could we presume that they're all facing a death sentence? Could we presume that they will all be convicted? Could we then presume that they would all face that sentence and be executed so they were no

longer any trouble to us and they could be the martyrs that they wish to be and set the example for others that might attack innocent people under the banner of al Qaeda, this hateful organization?

In closing, Madam Speaker, I will submit that some will be released and some of them will attack free people. Some of those victims are likely to be Americans.

I reject al Qaeda KSM coming to the United States, and I yield back the balance of my time.

## LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. BALDWIN (at the request of Mr. HOYER) for today on account of illness.

Ms. BORDALLO (at the request of Mr. HOYER) for December 10 until December 15 on account of official business in the district.

Mr. SESSIONS (at the request of Mr. BOEHNER) for today on account of attending a funeral in the district.

## SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. LANGEVIN) to revise and extend their remarks and include extraneous material:)

Mr. LANGEVIN, for 5 minutes, today.

Mr. MURPHY of Connecticut, for 5 minutes, today.

Mr. SABLAN, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. SCHIFF, for 5 minutes, today.

Mr. GRAYSON, for 5 minutes, today.

(The following Members (at the request of Mr. MORAN of Kansas) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, December 18.

Mr. JONES, for 5 minutes, December 18.

Mr. BURTON of Indiana, for 5 minutes, today and December 18.

Mr. MORAN of Kansas, for 5 minutes, today.

## ADJOURNMENT

Mr. KING of Iowa. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 38 minutes p.m.), under its previous order, the House adjourned until Monday, December 14, 2009, at 12:30 p.m., for morning-hour debate.

## EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

5006. A letter from the Regulatory Liaison, Department of Agriculture, transmitting the Department's final rule — Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2006 Tarrif-Rate Quota Year November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5007. A letter from the Regulatory Liaison, Department of Agriculture, transmitting the Department's final rule — Technical Assistance for Specialty Crops (RIN: 0551-AA71) received November 20, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

5008. A letter from the Division Chief, Division of Legislation and Regulations, Department of Transportation, transmitting the Department's final rule — U.S. Citizenship for Contracts on RRF Vessels [Docket No.: MARAD 2008 0076] (RIN: 2133-AB73) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

5009. A letter from the Assistant General Counsel for Regulatory Services, Office of General Counsel, Department of Education, transmitting the Department's final rule — Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program [Docket ID: ED-2009-OPE-0004] received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and Labor.

5010. A letter from the Director, Defense Security Cooperation Agency, transmitting (Transmittal No. 09-65) pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5011. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-56, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5012. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-64, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5013. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-55, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5014. A letter from the Director, Defense Security Cooperation Agency, transmitting Transmittal No. 09-62, pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended; to the Committee on Foreign Affairs.

5015. A letter from the Director, International Cooperation, Department of Defense, transmitting Pursuant to Section 27(f) of the Arms Export Control Act and Section 1(f) of Executive Order 11958, Transmittal No. 16-09 informing of an intent to sign a Project Agreement with Federal Republic of Germany; to the Committee on Foreign Affairs.

5016. A letter from the Assistant Secretary, Legislative Affairs, Department of State, transmitting Transmittal No. DDTC 127-09, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad, pursuant to section 36(c) and 36(d) of the Arms Export Control Act; to the Committee on Foreign Affairs.

5017. A letter from the Associate Director, PP&I, Department of the Treasury, transmitting the Department's final rule — Sudanese Sanctions Regulations; Iranian Transactions Regulations received November 19, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Foreign Affairs.

5018. A letter from the Director of Legislative Affairs, Office of the Director of National Intelligence, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Oversight and Government Reform.

5019. A letter from the Secretary, Department of Health and Human Services, transmitting a petition filed on behalf of workers from Baker-Perkins Company in Saginaw, Michigan, to be added to the Special Exposure Cohort (SEC), pursuant to the Energy Employees Occupational Illness Compensation Program Act of 2000; to the Committee on the Judiciary.

5020. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes [Docket No.: FAA-2009-1026; Directorate Identifier 2009-NM-197-AD; Amendment 39-16084; AD 2009-23-10] (RIN: 2120-AA64) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5021. A letter from the Program Analyst, Department of Transportation, transmitting the Department's final rule — Modification of the New York, NY, Class B Airspace Area; and Establishment of the New York Class B Airspace Hudson River and East River Exclusion Special Flight Rules Area [Docket No.: FAA-2009-0837; Airspace Docket No. 09-AWA-2; Amendment Nos. 71-34, 93-94] (RIN: 2120-AJ59) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5022. A letter from the Director of Regulations Management, Department of Veterans Affairs, transmitting the Department's final rule — Servicemembers' Group Life Insurance- Dependent Coverage (RIN: 2900-AN39) received November 17, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

5023. A letter from the Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Section 108 Reduction of Tax Attributes for S Corporations [TD 9469] (RIN: 1545-BH54) received November 18, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5024. A letter from the Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Examination of returns and claims for refund, credit or abatement; determination of correct tax liability (Rev. Proc. 2009-52) received November 24, 2009, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

5025. A letter from the Assistant Secretary, Legislative Affairs, Assistant Secretary of Defense, transmitting letter of issuance of certification, pursuant to Public Law 111-83, section 565; jointly to the Committees on Armed Services and Oversight and Government Reform.

## DISCHARGE OF COMMITTEE

Pursuant to clause 2 of rule XIII the following action was taken by the Speaker:

The Committee on Ways and Means discharged from further consideration. H.R. 2194 referred to the Committee of the Whole House on the State of the Union.

## TIME LIMITATION OF REFERRED BILL

Pursuant to clause 2 of rule XII the following action was taken by the Speaker:

H.R. 2989. Referral to the Committee on Ways and Means extended for a period ending not later than January 19, 2010.

## PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions of the following titles were introduced and severally referred, as follows:

By Mr. COHEN (for himself, Mr. ANDREWS, Mr. PAYNE, Mr. CONYERS, Mr. HOLT, Mr. WATT, Mr. ADLER of New Jersey, Ms. LINDA T. SÁNCHEZ of California, Mr. PALLONE, and Mr. PASCRELL):

H.R. 4283. A bill to prohibit United States attorneys and assistant United States attorneys from acting as or working for corporate monitors for specified periods after their service with the Government terminates; to the Committee on the Judiciary.

By Mr. RANGEL (for himself and Mr. LEVIN):

H.R. 4284. A bill to extend the Generalized System of Preferences and the Andean Trade Preference Act, and for other purposes; to the Committee on Ways and Means.

By Mrs. BONO MACK (for herself, Mr. GRIJALVA, Ms. RICHARDSON, Mr. CALVERT, Mr. BACA, and Mr. ISSA):

H.R. 4285. A bill to authorize the Pechanga Band of Luiseno Mission Indians Water Rights Settlement, and for other purposes; to the Committee on Natural Resources.

By Mr. COHEN (for himself, Mr. DAVIS of Illinois, and Mr. PAYNE):

H.R. 4286. A bill to amend the Elementary and Secondary Education Act of 1965 to allow a local educational agency that receives a subgrant under section 2121 of such Act to use the funds to provide professional development activities that train school personnel about restorative justice and conflict resolution; to the Committee on Education and Labor.

By Mr. COHEN:

H.R. 4287. A bill to establish an Office of Livability in the Office of the Secretary of Transportation, and for other purposes; to the Committee on Transportation and Infrastructure.

By Ms. HERSETH SANDLIN (for herself, Mr. GOODLATTE, Mr. BOYD, Mr. SMITH of Texas, Mr. DEFAZIO, Mr. SENSENBRENNER, and Mr. LUCAS):

H.R. 4288. A bill to prohibit the provision of Federal economic development assistance for any State or locality that uses the power of eminent domain power to obtain property for private commercial development or that fails to pay relocation costs to persons displaced by use of the power of eminent domain for economic development purposes; to the Committee on Agriculture, and in addition to the Committees on Transportation and Infrastructure, Financial Services, Natural Resources, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. DEGETTE:

H.R. 4289. A bill to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes; to the Committee on Natural Resources.

By Mr. HARE (for himself, Ms. SCHAKOWSKY, Mr. STUPAK, Mr. COHEN, Ms. KILPATRICK of Michigan, Mr. JACKSON of Illinois, Mr. KILDEE, Ms. SUTTON, Mr. COURTNEY, Ms. EDWARDS of Maryland, Mr. MEEKS of New York, Mr. OBERSTAR, Mr. RUSH, Mr. ANDREWS, Ms. CLARKE, Ms. DELAURO, Ms. FUDGE, Mr. GRAYSON, Mr. GUTIERREZ, Mr. KENNEDY, Ms. WOOLSEY, Mr. WEINER, Mr. SCOTT of Virginia, Ms. SLAUGHTER, Mr. HALL of New York, Mr. GENE GREEN of Texas, Mr. NADLER of New York, Mr. CARSON of Indiana, Ms. JACKSON-LEE of Texas, Mr. MICHAUD, Mr. TONKO, Mr. DOYLE, Ms. BERKLEY, Ms. HIRONO, Ms. SHEA-PORTER, Ms. CHU, Ms. WATSON, Mr. GRIJALVA, Mr. LUJÁN, Ms. TSONGAS, Mr. LOEBSACK, Mr. PRICE of North Carolina, Mr. HASTINGS of Florida, Mr. ROTHMAN of New Jersey, Mr. GARAMENDI, Mr. KAGEN, Mr. SABLAN, Mr. ELLISON, Mr. CLEAVER, Mr. LARSON of Connecticut, and Mr. BRALEY of Iowa):

H.R. 4290. A bill to establish the New Economy Grant Program through the Department of Labor to create public works jobs on State and local lands and community-based public interest projects, to direct aid to State and local governments for the retention and rehiring of certain public employees, and provide direct aid to the Departments of Agriculture and Interior to create public works jobs to address their deferred maintenance items; to the Committee on Education and Labor, and in addition to the Committees on the Judiciary, Science and Technology, Natural Resources, Agriculture, Financial Services, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LINDA T. SÁNCHEZ of California (for herself and Mr. BLUMENAUER):

H.R. 4291. A bill making emergency supplemental appropriations for fiscal year 2010 for the National Park Service, National Forest Service, and Federal Highway Administration for public land rehabilitation, road projects, and job creation; to the Committee on Appropriations, and in addition to the Committee on the Budget, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CHILDERS:

H.R. 4292. A bill to amend the Internal Revenue Code of 1986 to allow a refundable credit to the issuers of qualified zone academy bonds and qualified school construction bonds; to the Committee on Ways and Means.

By Mr. ARCURI:

H.R. 4293. A bill to amend the Public Works and Economic Development Act of 1965 to maximize the efficiency in administering governmental functions; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ARCURI:

H.R. 4294. A bill to amend the Public Works and Economic Development Act of 1965 to eliminate cost-sharing requirements in connection with economic adjustment grants made to assist communities that have suffered economic injury as a result of military base closures and realignments, defense contractor reductions in force, and Department of Energy defense-related funding reductions; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COURTNEY:

H.R. 4295. A bill to direct the Administrator of the Small Business Administration to establish and carry out a program to provide loans directly to small business concerns, and for other purposes; to the Committee on Small Business.

By Mrs. HALVORSON:

H.R. 4296. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive for the installation and maintenance of mechanical insulation property; to the Committee on Ways and Means.

By Mr. HODES:

H.R. 4297. A bill to direct the Administrator of the Federal Emergency Management Agency to review, update, and revise certain regulations relating to assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mrs. MCCARTHY of New York (for herself, Mr. TOWNS, Mr. MORAN of Virginia, Ms. JACKSON-LEE of Texas, Mrs. MALONEY, Mr. SERRANO, Mr. MCGOVERN, and Mr. QUIGLEY):

H.R. 4298. A bill to prevent gun trafficking in the United States; to the Committee on the Judiciary.

By Mr. SMITH of Washington (for himself, Mr. GRIJALVA, Ms. WATSON, Mr. CARNAHAN, Ms. CLARKE, Mr. DICKS, Mr. BUCHANAN, and Mr. BRALEY of Iowa):

H.R. 4299. A bill to authorize a capitalization of self-sustainable social services grant program to provide workforce development opportunities and training to people with barriers to employment; to the Committee on Education and Labor.

By Mr. TIERNEY (for himself, Ms. SLAUGHTER, Mr. CAPUANO, Mr. ANDREWS, Mr. ARCURI, Mr. BISHOP of New York, Mr. CARNAHAN, Mr. CLYBURN, Mr. COHEN, Mr. CONYERS, Mr. COSTELLO, Mr. COURTNEY, Mr. CUMMINGS, Mrs. DAHLKEMPER, Mr. DEFAZIO, Mr. DELAHUNT, Ms. DELAURO, Mr. DOGGETT, Mr. DOYLE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. ESHOO, Mr. FARR, Mr. FILNER, Mr. GARAMENDI, Mr. GRIJALVA, Mr. HARE, Mr. HASTINGS of Florida, Mr. HINCHEY, Ms. HIRONO, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. JONES, Ms. KAPTUR, Mr. KENNEDY, Mr. KUCINICH, Mr. LANGEVIN, Mrs. LOWEY, Mr. LYNCH, Mr. MASSA, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Mr. MOLLOHAN, Mr. MURTHA, Mr. NADLER of New York, Mr. OLVER, Mr. PLATTS, Mr. RODRIGUEZ, Ms. SCHAKOWSKY, Mr. SERRANO, Ms. SHEA-PORTER, Mr. STARK, Ms. SUTTON, Mr. THOMPSON of Mississippi, Mr. TONKO, Mr. TOWNS, Ms. TSONGAS, Mr. VISCLOSKY, Ms. WATSON, Mr. WAXMAN, Mr. WELCH, and Ms. WOOLSEY):

H.R. 4300. A bill to amend the Truth in Lending Act to establish a national usury rate for consumer credit card accounts under open end consumer credit plans, and for other purposes; to the Committee on Financial Services, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HOYER:

H.J. Res. 62. A joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress; considered and passed.

By Mr. CONYERS (for himself and Mr. KUCINICH):

H. Con. Res. 221. Concurrent resolution requesting that the President issue a proclamation annually calling upon the people of the United States to observe Global Family Day, One Day of Peace and Sharing, and for other purposes; to the Committee on Foreign Affairs.

By Ms. BEAN (for herself, Mr. COOPER, and Mr. MITCHELL):

H. Res. 965. A resolution repealing rule XXVIII of the Rules of the House of Representatives relating to the statutory limit on the public debt; to the Committee on Rules.

By Mr. BURGESS:

H. Res. 966. A resolution calling on the President and the Secretary of Education to fire Kevin Jennings from his post as ''Safe Schools Czar''; to the Committee on Education and Labor.

By Ms. CLARKE (for herself, Mr. GONZALEZ, Mr. GUTIERREZ, Ms. MOORE of Wisconsin, Mrs. MALONEY, Mr. HINOJOSA, Mr. SERRANO, Mr. CLAY, Mr. DAVIS of Illinois, Mr. BISHOP of Georgia, Ms. KILPATRICK of Michigan, Mr. TOWNS, Mr. GRIJALVA, Ms. BORDALLO, Mr. WATT, Mr. MEEK of Florida, and Mr. MEEKS of New York):

H. Res. 967. A resolution recognizing the 15th anniversary of the establishment of the Community Development Financial Institutions Fund and reaffirming the importance of its mission of economic and community development; to the Committee on Financial Services.

By Mr. HASTINGS of Florida:

H. Res. 968. A resolution expressing sympathy for and solidarity with the people of the Russian Federation following the bombing of the Nevsky Express; to the Committee on Foreign Affairs.

## ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 24: Mr. FORTENBERRY.

H.R. 391: Mr. HUNTER, Ms. GRANGER, and Mr. HARPER.

H.R. 503: Mr. FRELINGHUYSEN.

H.R. 678: Mr. JACKSON of Illinois.

H.R. 775: Ms. HARMAN and Mr. MARCHANT.

H.R. 816: Ms. SLAUGHTER.

H.R. 1017: Mrs. HALVORSON.

H.R. 1030: Mr. TIBERI.

H.R. 1177: Mr. MEEK of Florida.

H.R. 1205: Mr. YARMUTH and Mr. UPTON.

H.R. 1283: Mr. KILDEE.

H.R. 1305: Mr. MILLER of North Carolina.

H.R. 1402: Mr. DAVIS of Tennessee.

H.R. 1479: Ms. SLAUGHTER and Mr. JOHNSON of Georgia.

H.R. 1523: Ms. SHEA-PORTER.

H.R. 1547: Mr. JOHNSON of Illinois.

H.R. 1549: Mr. JOHNSON of Georgia.

H.R. 1551: Mr. CLAY.

H.R. 1616: Mr. POLIS

H.R. 1646: Mr. ROSS.

H.R. 1751: Mr. GUTIERREZ.

H.R. 1778: Mr. MICHAUD, Mr. GRIJALVA, and Mr. THOMPSON of Pennsylvania.

H.R. 1799: Mr. SOUDER.

H.R. 1879: Mr. LUETKEMEYER.

H.R. 1924: Mr. DICKS and Mr. PETERSON.

H.R. 1964: Ms. CASTOR of Florida.

H.R. 1992: Mr. BISHOP of New York.

H.R. 2000: Mr. DAVIS of Illinois.

H.R. 2006: Mr. FRANK of Massachusetts.

H.R. 2049: Ms. SLAUGHTER.

H.R. 2057: Mr. PETERSON.

H.R. 2112: Mr. COBLE and Ms. TSONGAS.

H.R. 2135: Mr. MCINTYRE.

H.R. 2149: Ms. SLAUGHTER.

H.R. 2372: Mr. INGLIS.

H.R. 2478: Mr. BILBRAY.

H.R. 2578: Mr. KAGEN.

H.R. 2593: Mr. TIAHRT.

H.R. 2624: Mr. SHUSTER and Ms. WOOLSEY.

H.R. 2669: Mr. COURTNEY.

H.R. 2709: Mr. GUTIERREZ and Ms. WATSON.

H.R. 2788: Mr. HUNTER.

H.R. 2882: Mr. HEINRICH.

H.R. 3012: Mr. MARSHALL.

H.R. 3024: Mr. LIPINSKI and Mr. FILNER.

H.R. 3101: Mr. MCGOVERN.

H.R. 3129: Mr. SCHOCK.

H.R. 3227: Mr. FRANK of Massachusetts.

H.R. 3277: Mr. COURTNEY.

H.R. 3286: Mr. NADLER of New York and Mr. KUCINICH.

H.R. 3287: Mr. TIM MURPHY of Pennsylvania.

H.R. 3321: Mr. JACKSON of Illinois and Mr. KLEIN of Florida.

H.R. 3331: Mr. WITTMAN and Mr. FORBES.

H.R. 3393: Mr. DRIEHAUS, Mr. FOSTER, Mr. PAUL, and Mr. PLATTS.

H.R. 3401: Ms. SLAUGHTER.

H.R. 3402: Mr. PAUL.

H.R. 3412: Mr. ISRAEL and Mr. KIRK.

H.R. 3427: Mr. JACKSON of Illinois.

H.R. 3458: Mr. HONDA.

H.R. 3464: Mr. CARSON of Indiana.

H.R. 3510: Mr. CARNEY and Mr. BERMAN.

H.R. 3688: Mrs. DAHLKEMPER.

H.R. 3699: Mr. MORAN of Virginia.

H.R. 3712: Mr. FATTAH, Mr. ALTMIRE, Mr. TIM MURPHY of Pennsylvania, Mr. DENT, and Mr. SOUDER.

H.R. 3715: Mrs. LUMMIS.

H.R. 3790: Mr. CHANDLER, Ms. SUTTON, Mr. MILLER of North Carolina, Ms. HERSETH SANDLIN, and Mr. ISRAEL.

H.R. 3845: Ms. PINGREE of Maine.

H.R. 3916: Mr. GERLACH, Mr. SHUSTER, Mr. MOLLOHAN, and Mrs. CAPITO.

H.R. 3918: Ms. MARKEY of Colorado.

H.R. 3930: Mr. GERLACH and Mr. FORBES.

H.R. 3943: Mr. CONYERS, Ms. NORTON, and Ms. JACKSON-LEE of Texas.

H.R. 4072: Mr. MCINTYRE.

H.R. 4082: Mr. SPACE and Mrs. SCHMIDT.

H.R. 4088: Mr. FILNER and Mr. SAM JOHNSON of Texas.

H.R. 4090: Mr. PETERS.

H.R. 4102: Mr. MCCAUL.

H.R. 4109: Mr. MCGOVERN, Mr. LARSON of Connecticut, and Mr. POMEROY.

H.R. 4112: Mr. SPRATT.

H.R. 4114: Ms. EDWARDS of Maryland.

H.R. 4133: Mr. PERRIELLO.

H.R. 4141: Mr. CARSON of Indiana and Mr. PENCE.

H.R. 4149: Mr. MCMAHON, Mr. TEAGUE, and Mr. LUJÁN.

H.R. 4156: Mr. HALL of New York.

H.R. 4168: Mr. MARKEY of Massachusetts and Mr. THOMPSON of California.

H.R. 4183: Mr. PETERS and Mr. WELCH.

H.R. 4196: Mr. CONYERS and Ms. SUTTON.

H.R. 4199: Mr. BRALEY of Iowa, Mr. HOLDEN, and Mr. BOYD.

H.R. 4214: Mr. BACA, Mr. BERMAN, Mr. BILBRAY, Mr. CALVERT, Mr. CAMPBELL, Mr. CARDOZA, Ms. CHU, Mr. FARR, Mr. GALLEGLY, Mr. ISSA, Mr. LEWIS of California, Mr. DANIEL E. LUNGREN of California, Mr. MCCARTHY of California, Mr. MCCLINTOCK, Mr. MCNERNEY, Mr. GARY G. MILLER of California, Mr. NUNES, Mr. RADANOVICH, Ms. RICHARDSON, Mr. ROHRABACHER, Mr. SCHIFF, Ms. WATSON, and Ms. WOOLSEY.

H.R. 4220: Mr. ROGERS of Kentucky.

H.R. 4227: Mr. REHBERG and Mr. ALEXANDER.

H.R. 4235: Mrs. NAPOLITANO.

H.R. 4247: Mrs. MCCARTHY of New York.

H.R. 4255: Ms. KILROY, Mr. PLATTS, Ms. JENKINS, Mr. TEAGUE, Ms. MARKEY of Colorado, Mr. OLSON, Mr. BRIGHT, Mr. WAMP, and Mr. MICA.

H.R. 4260: Mr. ORTIZ, Mr. ELLISON, and Ms. BORDALLO.

H.R. 4262: Mr. MCCARTHY of California, Mrs. BACHMANN, Mr. GOODLATTE, Mr. ROSKAM, Mr. PENCE, Mr. MACK, Mr. SULLIVAN, Mr. TIBERI, Mr. TIAHRT, Mr. BOOZMAN, Mr. DUNCAN, Mrs. BONO MACK, Mr. ADERHOLT, and Mr. BACHUS.

H.R. 4265: Mr. WELCH, Mr. COHEN, and Mr. COURTNEY.

H.R. 4267: Mrs. BLACKBURN.

H.R. 4268: Mr. CARSON of Indiana, Ms. WOOLSEY, Mr. GRAYSON, Ms. MCCOLLUM, Ms. ROYBAL-ALLARD, Mrs. NAPOLITANO, Mr. FILNER, Mr. MICHAUD, Ms. CORRINE BROWN of Florida, and Mr. YARMUTH.

H. Con. Res. 220: Mr. ALEXANDER, Mr. AUSTRIA, Mr. BOCCIERI, Mr. BOREN, Mr. BOSWELL, Mr. CAO, Mr. CHANDLER, Mr. COFFMAN of Colorado, Mr. CONNOLLY of Virginia, Mr. COOPER, Mr. GRIFFITH, Mrs. HALVORSON, Mr. HARE, Mr. HARPER, Mr. HILL, Ms. KILROY, Mr. KISSELL, Mr. LANCE, Mr. LUETKEMEYER, Mr. MARKEY of Massachusetts, Mr. MASSA, Mr. MELANCON, Mr. MINNICK, Mr. MITCHELL, Mr. OWENS, Mr. PAULSEN, Ms. PINGREE of Maine, Mr. ROONEY, Mr. SNYDER, Mr. SPRATT, Mr. STUPAK, Mr. TAYLOR, Mr. TEAGUE, Ms. TITUS, Mr. YARMUTH, Mr. SABLAN, Mr. BARROW, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. CASSIDY, Mr. DEFAZIO, Mr. DRIEHAUS, Mr. HIMES, Ms. JACKSON-LEE of Texas, Mr. KIND, Ms. SUTTON, Mr. WALDEN, Mr. WU, Mr. YOUNG of Alaska, and Mr. GUTHRIE.

H. Res. 510: Mr. DRIEHAUS.

H. Res. 704: Mr. CARNEY, Mr. HIMES, Mr. GARAMENDI, Ms. JENKINS, Ms. MATSUI, Mrs. CHRISTENSEN, Ms. LORETTA SANCHEZ of California, Ms. BALDWIN, Ms. WOOLSEY, and Mr. LANCE.

H. Res. 776: Mr. MARKEY of Massachusetts, Ms. BEAN, Mr. LUJÁN, Mr. HOLT, Mr. ISRAEL, Mr. POLIS, and Mr. MORAN of Virginia.

H. Res. 898: Mr. VAN HOLLEN and Mr. FRANK of Massachusetts.

H. Res. 904: Ms. SCHAKOWSKY, Ms. JACKSON-LEE of Texas, Mr. PIERLUISI, and Ms. MARKEY of Colorado.

H. Res. 905: Mr. JOHNSON of Georgia, Mr. BERMAN, Ms. WASSERMAN SCHULTZ, Mr. FOSTER, and Mr. COHEN.

H. Res. 924: Mr. HUNTER and Mr. ROGERS of Kentucky.

H. Res. 932: Ms. KILROY, Ms. RICHARDSON, Mr. FALEOMAVAEGA, Mr. HONDA, and Mr. WU.

H. Res. 945: Mr. CALVERT.

H. Res. 947: Ms. EDWARDS of Maryland.

H. Res. 949: Mr. BACHUS, Mr. POE of Texas, and Mr. SCALISE.

H. Res. 951: Mr. TIAHRT, Mr. BONNER, Mrs. SCHMIDT, Mr. BOOZMAN, Mr. BURTON of Indiana, and Mr. JOHNSON of Illinois.

H. Res. 954: Mr. CALVERT.

H. Res. 957: Mr. HELLER, Mrs. BLACKBURN, Mr. COBLE, Mr. PRICE of Georgia, Mr. ROONEY, Mr. SCALISE, Mrs. BONO MACK, Mr. MACK, Mr. PENCE, Mr. BRADY of Texas, Mr. MANZULLO, Mr. OLSON, Mr. ROSKAM, Mr. HASTINGS of Washington, Mr. NUNES, Mr. CONAWAY, Mr. WILSON of South Carolina, Mr. SHUSTER, Mr. ROHRABACHER, Mr. JORDAN of Ohio, Mr. HENSARLING, Mr. CAMPBELL, Ms. FALLIN, Mr. WAMP, Mr. CASTLE, and Mr. HARPER.

H. Res. 958: Mr. SPRATT.

H. Res. 960: Mr. ROYCE, Mr. MOORE of Kansas, Mr. COSTA, and Ms. WASSERMAN SCHULTZ.

## DISCHARGE PETITIONS—ADDITIONS OR DELETIONS

The following Members added their names to the following discharge petitions.

Petition 5 by Mrs. BLACKBURN on H.R. 391: Phil Gingrey, John Sullivan, Bill Cassidy, and Mary Bono Mack.

Petition 8 by Mr. NUNES on H.R. 3105: Mario Diaz-Balart, Jeff Miller, C. W. Bill Young, K. Michael Conaway, Jean Schmidt, Bill Cassidy, Rob Bishop, Cathy McMorris Rodgers, John Fleming, Spencer Bachus, Judy Biggert, Jim Jordan, Patrick T. McHenry, Blaine Luetkemeyer, John Linder, Ed Whitfield, Dan Burton, Todd Tiahrt, Michael K. Simpson, Don Young, David Dreier, Ted Poe, Jerry Moran, Jack Kingston, Charles W. Boustany, Jr., Rodney Alexander, Steven C. LaTourette, Mike Rogers (MI), Howard Coble, Tom Price, John Kline, Jeb Hensarling, Mary Fallin, Pete Olson, Donald A. Manzullo, Sam Johnson, W. Todd Akin, John J. Duncan, Jr., Marsha Blackburn, Mark E. Souder, Robert E. Latta, Thomas J. Rooney, Tom Latham, Joe Wilson, John B. Shadegg, John Abney Culberson, Kevin Brady, Kenny Marchant, Bill Posey, Walter B. Jones, Jeff Flake, Jeff Fortenberry, Steve Scalise, John R. Carter, and Frank D. Lucas.

United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 111th CONGRESS, FIRST SESSION

Vol. 155 WASHINGTON, FRIDAY, DECEMBER 11, 2009 No. 186

# Senate

The Senate met at 10 a.m. and was called to order by the Honorable JEFF MERKLEY, a Senator from the State of Oregon.

## PRAYER

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

Let us pray.

Gracious God, through the power of Your spirit, empower us to live vibrant lives that glorify You. Awaken our lawmakers to the opportunities all around them. Help them to hear Your call to move forward and to accomplish the things that honor You, as You guide them in the pursuit of wisdom and truth. May they confidently face their duties, knowing that You are their sufficient shield and defense. Lord, make them willing to listen, even to people with whom they expect to differ, united by the desire to represent You with exemplary conduct.

We pray in Your great Name. Amen.

## PLEDGE OF ALLEGIANCE

The Honorable JEFF MERKLEY led the Pledge of Allegiance, as follows:

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

## APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, December 11, 2009.*

*To the Senate:*

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JEFF MERKLEY, a Senator from the State of Oregon, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

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

**NOTICE**

If the 111th Congress, 1st Session, adjourns sine die on or before December 23, 2009, a final issue of the *Congressional Record* for the 111th Congress, 1st Session, will be published on Thursday, December 31, 2009, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2009, and will be delivered on Monday, January 4, 2010.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster/secretary/cong__record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerk.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–59.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the *Congressional Record* may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

CHARLES E. SCHUMER, *Chairman.*

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



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## RECOGNITION OF THE MAJORITY LEADER

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

## SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will be in a period of morning business. Senators will be permitted to speak for 10 minutes each during that period. Republicans will control the first 30 minutes, and the majority will control the next 30 minutes. We will continue work on an agreement to vote in relation to the drug reimportation matter, the Crapo motion to commit, and the side-by-side to the Crapo motion. These amendments and the motion are with respect to H.R. 3590, the health insurance reform legislation.

Yesterday, we filed cloture on the bill we got from the House, the appropriations bill, H.R. 3288, which includes Commerce-Justice-Science, Military Construction, Labor-HHS, Transportation, financial services, State and Foreign Operations. We are going to have at least two rollcall votes on motions to waive with respect to the appropriations conference report today. Senators will be notified when these votes are scheduled.

I direct this question through the Chair to my friend from South Dakota. I offered a unanimous consent request yesterday evening that set up a schedule of votes on the Crapo motion and, of course, the Dorgan amendment. Last night, I was told the Republicans were not ready yet. I ask my friend, are the Republicans ready to vote?

Mr. THUNE. Mr. President, the Republican leader has just arrived. I reserve any statement for him.

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

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

## RECOGNITION OF THE MINORITY LEADER

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

## HEALTH CARE AND THE OMNIBUS

Mr. MCCONNELL. Mr. President, Republicans are fully engaged in the health care debate. It is our view that there is no more important work we can do here than to show Americans what the Democratic plan for health care would mean to them. Once we return to the debate, Republicans will be ready with two important amendments.

One of those amendments, by Senator CRAPO, would enable the President to keep one of the pledges he made as a candidate and as President about what the Democratic plan for health care reform would look like. He said that no family making less than $250,000 a year and no individual making less than $200,000 a year would see a tax increase of any kind. The Crapo motion would ensure that promise is kept.

An amendment by Senators HUTCHISON and THUNE would ensure that none of the taxes imposed by this bill would go into effect a day earlier than the benefits. In other words, you don't get taxes before you get benefits. This is a commonsense amendment. You certainly wouldn't ask someone to pay for the mortgage on a house 4 years before they were allowed to move in. In the same way, we should not tax people for a benefit they don't get for 4 long years.

The Hutchison-Thune amendment also aims to keep government honest, because most Americans have a hard time believing Washington would collect taxes on one thing for 4 years and actually have the discipline not to use the money on something else. This amendment would guard against that.

For the moment, the majority has decided to take us off health care. It has moved to an Omnibus appropriations bill that has all the hallmarks of all the other bloated spending bills we have seen this year. It is really outrageous, actually. At a time of double-digit unemployment, at a time when Democrats are talking about increasing by nearly $2 trillion the amount of money the government is legally allowed to borrow, the majority has moved us off of one $2.5 trillion spending bill and on to a 1,000-page omnibus that would cost the American taxpayer another $½ trillion right in the middle of a recession.

Once again, the majority has shown a lack of restraint when it comes to spending. At a moment of record debt, at a moment when inflation is nearly flat, this bill represents a 12-percent annual increase in government spending. Let me say that again. Inflation is flat. Yet we are increasing discretionary spending by 12 percent in this omnibus spending bill. The American people are not increasing their spending 12 percent. Moreover, it includes a number of controversial, unrelated provisions, including, among other things, language to weaken restrictions on abortion funding.

This $½ trillion spending bill spends $50 billion more than last year. All this spending comes right on the heels of a new report from Treasury that says the government ran a deficit of nearly $300 billion in October and November—the worst deficit we have ever had at this point in a fiscal year, ever. At a time when families across the country are struggling to make ends meet, lawmakers almost seem to be flouting their ability to spend taxpayer money. This bill contains many worthy projects. Unfortunately, the majority has piled on so much spending, so much debt and new controversial policies that I certainly can't support it.

As you may know, the Senate is considering a bill that would make basic changes in the country's health care system. We have been debating it for weeks. What I keep hearing on the other side is no reference to what the American people think. I hear these arguments about making history. Ignoring the public is not a great way to make history. We have not seen poll data for months that indicate the American people support the Reid bill. The most devastating one came out last night. A CNN opinion research poll taken December 2 and 3, this week—not exactly a bastion of conservatism—indicates that 61 percent of the American people oppose this health care bill and only 36 percent favor it.

We are looking for one courageous Member of the other side of the aisle—just one—to stand up and say he or she will not ignore the overwhelming opinion of the American people, he or she will not be so arrogant as to assume we have the right answer here and 61 percent of the American people somehow don't know what they are talking about.

The American people are pretty smart. They have been watching this carefully. This health care bill, like no other issue, affects every single American regardless of age. Everybody is interested in the subject. They have watched the debate closely. They are telling us: Please, Congress, please do not pass this bill.

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 now be a period of morning business, with Senators permitted to speak for up to 10 minutes each, with the Republicans controlling the first 30 minutes and the majority controlling the next 30 minutes.

The Senator from Texas.

## ORDER OF PROCEDURE

Mrs. HUTCHISON. Mr. President, as I understand it, we are now in the 30-minute timeframe for the Republicans; is that correct?

The ACTING PRESIDENT pro tempore. That is correct.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that we be allowed to have a colloquy so we can go back and forth.

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

Mrs. HUTCHISON. I thank the Acting President pro tempore.

## HEALTH CARE REFORM

Mrs. HUTCHISON. Mr. President, I think the Republican leader just stated the case for why it is so important that we have the votes and that we go back to the drawing board on this bill. Americans are looking at the fine print of this bill. They are seeing $½ trillion in taxes.

Just this week, the President has had a jobs summit because we are all concerned about jobs. My goodness, since the President took the oath of office, more than 3.5 million Americans have lost their jobs—300,000 Texans—our budget has tripled to $1.4 trillion, and the Federal debt as a portion of the U.S. economy has risen to its highest level since World War II. So we are very concerned about these taxes. In fact, the small businesses of our country have said: No, do not do this to us.

The NFIB, which is the National Federation of Independent Business, sent a letter just this week saying:

> When evaluating healthcare reform options, small business owners ask themselves two specific questions. First, will the bill lower insurance costs? Second, will the bill increase the overall cost of doing business?

Well, the answer to the first question is clearly no because the business taxes start on January 1, 2010—3 weeks or so from now—and going forward, the mandates and taxes in 2014 to small business are egregious. It could be $750 per employee or it could be $3,000 per employee if you do not have exactly the right mix of health care coverage for your employees. Well, at $3,000 per employee, small businesses are telling me: I am out of here. We are just going to let people go to the government option because we cannot afford that.

So the answer to question No. 2 in the NFIB letter—which is, ''Will the bill increase the overall cost of doing business?''—is, well, of course it will, at a time when we are seeing the numbers of people employed go down.

We are in a financial crisis in this country. People are jobless. We are in a holiday season. People are very stressed, and here we have a health care bill being rushed through, without amendments being able to come forward with a real chance for passing them. The cost of business is going to go up, which means more people are going to be laid off.

Now, I want to ask my friend, the Senator from South Dakota, a question because he and I are teaming up on an amendment. If we are going to have taxes increase in 3 weeks, you would say: Oh, OK, well taxes are going to start in 3 weeks, so, then, where is the package I signed up for that is going to lower my health care costs? So I would ask the Senator from South Dakota, when do the programs that are supposed to lower health care costs take effect?

Mr. THUNE. I would say to my friend from Texas, Senator HUTCHISON, that as we have examined this legislation and have looked at its cost and its benefits and how that is distributed over time, it has become clear that what the other side has tried to do—the Democrats have tried to do—with this bill is understate its true cost by front-loading the tax increases and back-loading the spending. In other words, the tax increases kick in right away, when much of the benefit of the bill does not kick in for several years.

So I want to point something out, just to illustrate what the Senator from Texas has said; that is, the tax increases in the bill begin on January 1 of this year. So 21 days from now, Americans, individuals, families, and small businesses are going to see their taxes go up. Unfortunately, they are not going to see any benefit come until 1,482 days later.

What that, in effect, does is it understates the total cost of this legislation. They have said: We want to get this under $1 trillion. The President said: I need a bill under $1 trillion. So they have tried to come up with a bill that is about $1 trillion. But what they do not tell you is that by delaying the benefits and front-loading the tax increases, you are actually going to have a 4- or 5-year period where people are having to experience tax increases. That is going to impact the small businesses because you have a Medicare payroll tax increase, which, by the way, for the first time, will not be used for Medicare but will be used to create a whole new entitlement health care program.

You have an employer mandate which is going to hit small businesses. You have the tax on medical device manufacturers, on prescription drugs, on health plans. You have all these taxes that kick in right away.

So what happens? These taxes get passed on to the consumers in this country in the form of higher premiums, so people are going to see their premiums go up. Small businesses are going to see their taxes go up immediately—well, 21 days from now. But Americans are not going to see any benefit from this for 1,482 days. So what we have is a gimmick that has been used to disguise the total cost of this bill, which we all know when fully implemented is not $1 trillion but $2.5 trillion.

So the Senator from Texas and I have a motion, which I believe is supported by the Senator from Wyoming, who is in the Chamber, that would delay the tax increases until such time as the benefits begin so we synchronize or align the tax increases and the fees to begin at the same time the benefits do so we will reflect the true cost of this legislation to the American people and not unfairly begin punishing small businesses by raising their taxes before a single dollar of benefit is going to be distributed to the American people.

Mrs. HUTCHISON. So I would ask the Senator from South Dakota—because it is our amendment, the Hutchison-Thune amendment—and surely the American people, who would look at the debate, would say: We are missing something. This cannot be right. We can't have taxes that are increasing our premiums, increasing our prescription drug costs, increasing our medical devices we must have for our health care for 4 years. Did he say that right? Did he say we would be paying those higher costs for 4 years before there is any option available to allow more people to have health care coverage?

Mr. THUNE. I would say to my friend from Texas, it is kind of the same old Washington game, the same old Washington gimmick, the same old backroom deal that has been cut basically that, of course, we have had no input into. Incidentally, there is another now, the latest permutation of this discussion, going on right now behind closed doors, which is the Medicare expansion, which is a subject for a whole other day.

But I think the American people are looking at this and saying: How does this impact me? More than anything else, they are watching this big debate in Washington, DC, and saying: How does this impact me? I think what they are concluding is that 90 percent of the American public, according to the Congressional Budget Office, would see their premiums stay the same at best or at worst go up, and when I say ''stay the same,'' that means double the rate of inflation annual increases in their health insurance premiums.

So the best you can hope for, if you are an American today, is the status quo when it comes to your health insurance premiums.

If you buy in the individual marketplace, your premiums are going to go up 10 to 13 percent above the annual, double the rate of inflation increases that we are currently seeing.

So that is what happens to the American public, the average person out there, in terms of their health insurance premiums. If you are a small business, you are looking at tax increases. You are looking at a whole new raft of tax increases that you are going to end up having to pay, which is why all of the small business organizations—the Senator from Texas pointed out the letter from the National Federation of Independent Business, which says this is going to drive the cost of doing business up. This is going to increase the cost of health care, not lower it. What they want to see in reform—small businesses that are the economic engine that creates jobs in this economy—is they want to see health care reforms put in place that drive health care costs down.

We know from every estimate that has been done, such as from the Congressional Budget Office—we have some data now from the CMS actuary that just came out yesterday that says overall health care expenditures are

going to go up, health insurance premiums are going to go up. So small businesses are looking at higher taxes.

If you are a senior citizen in America, and one of the 11 million people who get Medicare Advantage, your benefits are going to be cut. So you have higher premiums, increased taxes on small businesses, Medicare benefit cuts to senior citizens across this country, and cuts to providers, and if you are a young American, you are faced with a $2.5 trillion new entitlement program that you are going to have to pay for.

That is what the American people, as they are observing this debate, can expect to come out of this, if the bill that has been proposed by the majority is enacted. That is why we are working so hard to defeat that and put in place some commonsense reforms that actually make sense to the American people.

I know the Senator from Wyoming, who is a physician, knows full well the impact of many of these policies from being on the front line. He is someone who has had to deliver health care services in a rural State. So I would ask him to give us his thoughts about what these tax increases and Medicare cuts are going to mean to health care delivery in places such as Wyoming.

Mr. BARRASSO. I thank my colleague from South Dakota because South Dakota and Wyoming are very similar in many ways. Both have rural areas all spread across the State, with people needing health care.

And I have seen it. I have seen the concerns from people, but also from small businesses. My colleagues mentioned the National Federation of Independent Business. A lot of businesses in Wyoming are members of that organization, and rightfully so, because small business is the engine that drives the economy. They are the job creators in this country.

I see these taxes—4 years of taxes—before the first health care services are given as going to hurt our small businesses in Wyoming. It is going to hurt small businesses all around the country.

In one of the morning papers, it talks about the plans that are being presented by the Democrats, with all the increases in health costs—the fines, the taxes, that this will cost 1.6 million jobs before the first health care services are given in 2013—1.6 million jobs across the country. That affects all of our States.

At a time when unemployment is at 10 percent, at a time when Investor's Business Daily, this morning, says: ''Job Cuts Hit Hardest on Low-Skill Men; Outlook Is Gloomy,'' at a time when we are looking at an outlook which they call in the headlines of the front page of their paper ''gloomy,'' why would we say: Lets increase taxes on Americans, and then cut Medicare from our seniors who depend upon Medicare, and lets not improve services for 4 more years?

It is no surprise then that the Republican leader would come to the floor and say we have now reached an all-time high of American people opposed, completely opposed, to this piece of legislation. The Republican leader read a poll that said 61 percent of Americans now oppose this bill. Well, it is because they are learning more about it. The more people of America see what is in this bill, the more they realize they cannot believe any of the promises that were made by the Democrats, by the administration, the promises that were made, and the polling shows it.

Two specific questions that were asked in the poll were two specific promises that the President made. One is, he said he will not sign a bill if it adds one dime to the deficit. OK. We do not want to add to the deficit, although the Democrats want us to vote this weekend on raising the debt level by well over $1 trillion. And why? Because they cannot control the spending. But the question was, do you think the Federal budget deficit would or would not increase if this bill is passed—when the President said it will not raise it by a dime?

Mr. President, 79 percent of Americans said this is going to increase the deficit. Only 19 percent believe what the President is telling the American people.

Then the question of taxes. The President said: My plan will not raise your taxes one penny. What do the American people think when the President speaks? Question: Do you think your taxes would or would not increase? This is the CNN poll the Republican leader just talked about, done earlier this month: Do you think your taxes would or would not increase? The number of people who believe their taxes will increase if this passes, 85 percent. Eighty-five percent of the American people believe they are not getting it straight from the President of the United States. Only 14 percent believe him when he says he will not raise taxes a penny.

So we have the Democrats bringing forth a bill—to me, as a practicing physician in Wyoming, taking care of families in Wyoming, talking to doctors, talking to patients, having townhall meetings in the State, having telephone townhall meetings, the Democrats bring forth a bill that the people of Wyoming and the people of America realize is going to cost them more, is going to add to the deficit, and hurt the health care they receive.

Eighty-five percent of Americans are happy with the health care they receive. They do not like the cost. They do not like the price. But this bill we are looking at is going to raise premiums for people who have insurance. The President promised that for families all across America, their premiums would drop by $2,500 per family. But if you go out there trying to buy insurance, if this bill passes, you are going to end up paying $2,100 more than you would otherwise if nothing passes. That is why the majority of Americans say we would be better off if nothing passed. That is what the American people say. The Democrats seem to be ignoring the voice of the American people. At a time of 10 percent unemployment, at a time when the National Federation of Independent Business points out that we will lose over a million more jobs if this passes, we should be looking at ways to help small businesses hire more workers, hire more people.

The small businesses continue to be the engines that drive up the economy. Senator COLLINS from Maine was on the floor and gave an explanation of some of the taxes on all of the small businesses in Maine. If you have 10 employees and you go to an 11th employee, if this bill passes, that small business gets penalized for growing their business.

We want to have an opportunity to hire people.

She also explained that if we actually try to work ways through small businesses to give raises to people, those businesses get penalized from a tax standpoint.

As I look at this health care bill, we need health care reform that is going to bring down the cost of care. This bill is going to raise the cost of care for all Americans. It is going to hurt our seniors by taking almost $500 billion out of Medicare, a program on which the seniors depend. It is going to raise $500 billion in taxes which is going to hurt the engine that drives the economy. It is going to hurt small business. It is going to cause people to lose their jobs. I think it is foolish for people to continue to support this bill. It makes no sense.

I listened to my colleague from South Dakota who showed the chart that says 21 days until the tax increases begin but almost 4 years until the benefits begin. What do the people in South Dakota have to say about this?

Mr. THUNE. Let me, if I might, enter into a discussion with the Senator from Wyoming because, as he said, his State and my State are not unlike in terms of the composition of population. We have big geographies in Wyoming and in South Dakota and in the West and a lot of rural health care delivery. The primary job creator in places such as Wyoming and South Dakota is small business. Small businesses are the economic engine that creates jobs.

As the Senator from Wyoming mentioned, according to many of the analyses that have been done of this legislation, it would be a job killer. It has been suggested by the National Federation of Independent Business that 1.6 million jobs would be lost.

What is ironic about that is I have heard our colleagues on the other side repeatedly say this is going to be great for jobs. This is going to be good for the economy. If that is true, then why are all of these business organizations coming out and saying it would increase the cost of doing business and it would increase health care costs? We

have that now validated by the Congressional Budget Office, by the CMS Chief Actuary at Health and Human Services saying overall health care costs under this legislation are going to go up, not down, both as a percentage of the gross domestic product as well as for individuals who are going to see it in the form of higher health insurance premiums.

I say to my friend from Wyoming, because he and I represent similar constituencies and the economies are similar, although he has—we wish we had more oil and gas in South Dakota along the lines of what they have in Wyoming—but the small business sector is what creates jobs.

He mentioned the National Federation of Independent Business. I wish to mention one other letter we received from an organization called the Small Business Coalition for Affordable Health Care. In it they state that these reforms fall short of long-term, meaningful relief for small business. Any potential savings from these reforms are more than outweighed by the new taxes, new mandates, and expensive new government programs included in the bill. This is signed by 50 small business organizations, one of which, by the way, is the American Farm Bureau Association, which is a big presence in my State, represents a lot of farmers and ranchers, small business people, and I am sure represents a lot of members in the State of Wyoming as well as in the State of Texas.

I think what they are saying is, what all of these business groups are saying, and that is we don't find anything in this—there may be some good things in it, but we find the overall core elements of this bill to be a detriment to job creation, will kill jobs, and will drive up the cost of doing business in this country.

It is hard for me to believe that some of the statements made by the other side—and I assume they are making them with the greatest sincerity, but they are factually wrong. If they weren't, we wouldn't have every business organization in this country coming out and saying we are opposed to this because it is going to increase the cost of doing business, it is going to kill jobs, and it is going to increase the cost of health care.

So to our colleague from Texas I would say I suspect she has a lot of small businesses in her State, not unlike Wyoming and South Dakota, that share that view.

Mrs. HUTCHISON. Mr. President, I am glad you mentioned the Farm Bureau because my constituents in the Farm Bureau, 400,000 members of the Texas Farm Bureau, have contacted me repeatedly about how bad this will be for the farmers, the small businesses they own, and the few people they employ. Maybe they have five employees. This will be a killer for them.

To reinforce the letter that the Senator from South Dakota read from the Small Business Coalition for Affordable Health Care, they say in the letter:

> If this bill is enacted, the small business community will be forced to divert resources away from hiring and expansion, the very investments our country so desperately needs as it continues to struggle in a faltering economy with double-digit unemployment.

Then they go on to talk about what those costs are going to be: a small business health insurance tax; an employer mandate that encourages job cuts, not job creation; and the temporary small business tax credit falls short.

I am glad they mentioned this temporary small business tax credit because I have heard them say on the other side of the aisle: But there is a tax credit for small business that will alleviate the pain.

Well, that credit is for employers with fewer than 25 employees with average annual wages of less than $40,000. Very few small businesses are going to be able to qualify for this tax credit. That is a very strict standard. The average annual wages of less than $40,000 are going to be very difficult. However, if they qualify, the credit is temporary. The credit is temporary. It is not a permanent credit that helps people who would be able to qualify for this credit. So, in effect, this is not a tax credit at all, and certainly when it goes away it will help no one.

I ask unanimous consent to have printed in the RECORD the letter from the Small Business Coalition for Affordable Healthcare.

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

DECEMBER 10, 2009.

DEAR REPRESENTATIVE: Representing the country's largest, oldest and most respected small business associations who have spent more than a decade working to increase access and affordability of private health insurance, the Small Business Coalition for Affordable Healthcare is writing to express our opposition to the Patient Protection and Affordable Care Act (H.R. 3590).

Small business has been a constructive participant in the current healthcare debate. Our small business and self-employed entrepreneurs have been clear about what they need and want: lower costs, more choices and greater competition for private insurance. These reforms are critical, but to be workable and sustainable, they must be balanced against the overall cost of doing business. Unfortunately, with its new taxes, mandates, growth in government programs and overall price tag, the Patient Protection and Affordable Care Act costs too much and delivers too little.

While a few of the provisions in the bill reflect some of the insurance market reforms that the small business and self-employed communities have long sought, those reforms fall short of long-term meaningful relief for small business. Any potential savings from those reforms are more than outweighed by the new taxes, new mandates and expensive new government programs included in the bill. Those new costs of doing business are also disproportionately targeted at small business. If this bill is enacted, the small business community will be forced to divert resources away from hiring and expansion—the very investments our country so desperately needs as it continues to struggle in a faltering economy with double-digit unemployment. Those new costs include:

A small business health insurance tax

Though small business has repeatedly called for reducing the cost of health insurance, the Senate bill includes a devastating new $6.7 billion annual tax ($60.7 billion over ten years) that will fall almost exclusively on small business and the self-employed because they purchase in the fully-insured market. While the fee is levied on the insurance company, a recent CBO report confirms the small business insurance tax ''would be largely passed through to consumers in the form of higher premiums for private coverage.'' This will send costs upward—the opposite of what the nation's small employers need.

An employer mandate that encourages job cuts, not job creation

The only certainty of an employer mandate is that it punishes both the employer and employee. The employer bears the first blow in trying to afford the new unfunded mandate and the second blow is borne by the employee in the form of lower wages and job loss. The mandate in H.R. 3590 devastates the small business community in two ways. First, since the bill does little to make insurance more affordable and the tax credit is so limited, few will be able to obtain affordable insurance. Second, the penalties assessed on firms—both offering and non-offering—will most certainly result in a reduction of full-time workers to part-time workers and discourage the hiring of those entrants into the workforce who might qualify for a government subsidy. Overall, the mandate included in this legislation is especially troubling because it fails to recognize how the cost of health benefits directly impacts wages of the employee. Instead, H.R. 3590 blames the employer for a cost (health insurance) that is beyond their control.

The temporary small business tax credit falls short

A short-term tax credit only puts off the inevitable—increased cost in future years. The effectiveness of the tax credit in H.R. 3590 is limited: the full value of the credit is only available to those with wages of less than $20,000 and phases out at $40,000. While the credit is designed to offset the cost of insurance, its ''savings'' potential is merely temporary since it only applies if you buy insurance in the exchange and it expires after just two years.

Health insurance exchange plans lack affordable choices

Small business has long sought a simpler and more efficient way to shop for insurance. H.R. 3590 creates a framework for exchanges that can help ease administrative and overhead costs. However, those savings are quickly erased if the exchange plans are more expensive than what small employers can afford. A recent CBO analysis of premiums under H.R. 3590 paints a disheartening picture: small group premiums, at best, would decrease by about 2 percent and could increase 1 percent. The impact on non-group premiums is even more devastating, as they are expected to increase an average of 10–13 percent per person. Those estimates, in addition to the financing provisions included in the bill, slam the 'savings' door shut. Steps must be taken to ensure that a greater variety of more affordable plans are available to small employers and their employees.

Limited value of Simple cafeteria plans

The inclusion of Simple cafeteria plans in H.R. 3590 has the potential to bring about a new option for small employers seeking to offer coverage in an employer-sponsored setting. The bill, however, currently lacks language to permit owners of many ''pass-

through'' business entities to participate in cafeteria plans. Unless owners can participate in the plan, they will be less likely to provide insurance to their workforce.

Insurance rating reforms that result in ''rate shock''

Employers in the small group and non-group market have long lived with the fear that a single illness could either price them out of affordable insurance or that they could be rejected for coverage altogether. While H.R. 3590 attempts to ensure that insurance will be more widely available to all, the restrictive rating (3:1 on age) and lack of a phase-in for existing plans threatens to undermine the viability of both plans that people own today or plans that they will buy in the future through the exchange. Only balanced rating reforms that are phased-in over an appropriate timeframe have the potential to transform these poorly functioning insurance markets.

New paperwork burdens and costs for small businesses

The Patient Protection and Affordable Care Act imposes a new tax-compliance paperwork burden on small businesses. The ''corporate reporting'' provision is an expansion of reporting requirements (for transactions of more than $600), which adds another $17 billion to the cost of doing business for small business.

A waiting period that lacks flexibility

Small employers, including those who employ full-time, part-time, temporary and seasonal workers, face much higher turnover rates than their large business counterparts. They face significant challenges related to providing healthcare benefits to their workforces. The Patient Protection and Affordable Care Act presents two specific problems. First, it defines a full-time employee as working an average workweek of 30 hours. Second, it outlines a 90-day waiting period, but then implements fines (at the 30–60-day and the 60–90-day timeframe) of $400 and $600 per affected worker respectively. In industries with above average turnover (e.g. the restaurant industry has roughly a 75 percent turnover rate annually) these provisions would lead to fewer full-time workers and less hiring overall.

Employers and employees lose flexibility and choice

Small employers need more affordable health insurance options. However, the prohibition of HSA, FSA and HRA funds to purchase over-the-counter medications, along with the $2,500 limit on FSA contributions, diminishes flexibility and threatens to further limit the ever-shrinking options employers have to provide meaningful healthcare to their employees.

An unprecedented increase in the Medicare payroll tax

Since its creation the payroll taxes dedicated to Medicare programs have been dedicated specifically to funding Medicare. However, the Patient Protection and Affordable Care Act changes the purpose of the tax while setting the precedent to use payroll taxes to pay for other non-Medicare programs. Furthermore, it will raise taxes for some small businesses.

No meaningful liability reform

Our medical liability litigation system creates a disincentive for affordability and efficiency while creating a climate where the practice of defensive medicine increases healthcare spending, and overall costs. Those increased costs extract a particularly heavy toll on the ability of small business to access affordable healthcare for their employees and dependents. Meaningful liability reform will inject more fairness into the medical malpractice legal system, and reduce unnecessary litigation and legal costs.

A public option that threatens choice and competition

A government-run plan cannot compete fairly with the private market and threatens to destroy the marketplace, further limiting choices. We believe that, with proper reforms, the private market can be held accountable and provide greater competition and lower-cost solutions where insurers compete based on their ability to manage, rather than shed risk.

While our nation's entrepreneurs in the small business and self-employed communities strongly believe that the status quo is unsustainable, the measure of success is not simply to produce reform legislation. As some in the media have recently emphasized, the choice is not between the status quo and the bills we have seen emerge from this process. The choice is between flawed legislation and workable alternatives. In short, the legislation must improve the status quo. H.R. 3590 fails to provide those much-needed improvements, and instead makes things worse than they are today. We greatly hope that the Senate will refocus its energy and work with small business to develop the common-sense solutions that make our core needs a top priority.

Sincerely,

Aeronautical Repair Station Association; American Bakers Association; American Farm Bureau Federation®; American Hotel & Lodging Association; American International Automobile Dealers Association; American Rental Association; AMT—The Association For Manufacturing Technology; Associated Builders and Contractors, Inc.; Associated Equipment Distributors; Associated General Contractors of America.

Association For Manufacturing Technology; Association of Ship Brokers & Agents; Automotive Aftermarket Industry Association; Automotive Recyclers Association; Commercial Photographers International; Electronic Security Association; Independent Electrical Contractors; Independent Office Products & Furniture Dealers Alliance; International Foodservice Distributors Association; International Franchise Association.

International Housewares Association; International Sleep Products Association; National Association of Convenience Stores (NACS); National Association of Home Builders; National Association of Manufacturers; National Association of Mortgage Brokers; National Association of Wholesaler-Distributors; National Automobile Dealers Association; National Club Association; National Federation of Independent Business.

National Lumber Building Material Dealers Association (NLBMDA); National Retail Federation; National Retail Lumber Association; National Roofing Contractors Association; National Tooling and Machining Association; National Utility Contractors Association; Northeastern Retail Lumber Association; Precision Machined Products Association; Precision Metalforming Association; Printing Industries of America.

Professional Photographers of America; Self-Insurance Institute of America (SIIA); Service Station Dealers of America and Allied Trades; Small Business & Entrepreneurship Council; Society of American Florists; Society of Sport and Event Photographers; Stock Artist Alliance; The PGA of America; Tire Industry Association; U.S. Chamber of Commerce.

Mrs. HUTCHISON. Mr. President, I am from a State that has big cities, but the vast majority of my State is rural, as is Wyoming and as is South Dakota. I see my employers, my small business owners, which are the largest bulk of the employers in my State, every day. I talk to them or I see them. Unfortunately, we are in Washington every day right now, 7 days a week, but when I am home I see them and when I am here and talking to them on the phone, or they are visiting me, I talk to them and they are aghast. They are aghast that Congress would actually be putting more strain on small business at a time when we know the jobless rate is the highest since World War II and people are trying to do their part to increase our economy and they can't do it with more taxes, more mandates, more burdens. So it is time we look at the tax burden and do something about it.

The Senator from South Dakota and I are trying to do something about it. We are saying, at the very least we should not allow this bill to go forward when the taxes start next month—January 2010—because none of the programming gets up and running until 2014. So we are going to have the mandates and the business taxes and we are going to have the program that is supposed to alleviate the health care crisis in our country in 2014. Shouldn't we start all of the taxes in 2014 rather than asking people to pay for 4 years the taxes that will increase insurance premiums, increase prescription drug costs, and increase medical equipment costs—$100 billion in new taxes on those items—shouldn't we at least put it off until the supposed program comes into place. Because in 4 years, with any luck in America, we won't have these programs start.

There is hope for America that we can stop this program by 2014 as people learn what is in it and protest enough that the Members of Congress who are elected in 2010, elected in 2012, will say: No, we now know that this would be a disaster for our country. There is hope.

I would ask the Senator from Wyoming, when people start learning about the Medicare cuts about which you have spoken so eloquently, and the taxes on the small businesses in your State and all of our States, do you think that perhaps not putting these taxes in place is a good policy, because maybe we can still stop this when people find out what is in it, when it is supposed to take effect 4 years from now?

Mr. BARRASSO. Mr. President, I would respond to my colleague from Texas that I think she is absolutely right. The more people learn about this bill and the details of the bill, the more the American people oppose this bill.

My colleague from Texas made a wonderful point yesterday and again today when she said if they start this

tax collecting right now, do we even know the money is going to be there 4 years from now to start supplying the services. There was a story in today's USA TODAY talking about unemployment in this country, and the story says:

Public Gain, Private Pain. For Federal workers there is a hiring boom. The Federal Government is adding jobs this year at a rate of nearly 10,000 per month.

We have read about all of the different bureaucracies that will be brought into play if this passes: over 70 new bureaucracies, 150,000 more Federal employees, more Washington bureaucrats to make rules and regulations that affect the people of America. It talks about the 10-percent unemployment in the country. It says, it is the new Federal jobs—not the small business jobs, the Federal jobs—that have helped bring down the unemployment rate from 10.2 to 10 percent. It is the Federal jobs.

I am looking at all of this money that Washington is going to collect. I used to think it was a big gimmick so they could say, Well, we have kept the number under $900 billion. I still believe it is a big gimmick, but I am concerned they are going to spend the money as well so the money won't be there, which is the point of the Senator from Texas, who has been very fiscally conservative, out there always making sure we are not spending the taxpayer money in any way that is not a wise use of the money.

Is that one of the concerns the Senator has? I know the Senator from South Dakota has similar concerns: Will the money be there if they are going to hire more Washington bureaucrats, which is what USA TODAY says?

Mr. THUNE. That is exactly what our concern is. I would also add this recent study that came out yesterday by the CMS chief actuary sheds a lot of additional light on what is a very bad proposal, a big government proposal that does create 70 new programs here in Washington, DC, but does nothing to affect in a positive way the health care costs that most Americans are dealing with right now. The actuary goes on to say that access to care problems is plausible and even probable under the Reid bill.

So the issue we have talked about in States such as Wyoming and South Dakota, where people travel long distances to get access to health care, would be aggravated by this legislation because there would be a need for more and more providers—hospitals, physicians—who currently don't take Medicaid patients. You expand Medicare, which is the latest proposal the Democrats have put forward, and as a consequence of that you get fewer and fewer hospitals, fewer and fewer physicians who are accepting Medicare patients, because Medicare and Medicaid are both underreimbursed, therefore creating a cost shift where the cost is shifted over to private payers whose premiums continue to go up and up.

So that is why we see all of these studies coming out saying premiums are going to go up, taxes are going to go up, and Medicare benefits are going to be cut, particularly for seniors who have Medicare Advantage. At the end of the day, this ends up being a $2.5 billion expansion of the government here in Washington, DC.

But to the point the Senator from Texas made—and I think—I know we are running out of time. We want to vote. We want to vote on this motion. We don't think you ought to start taxing people in 21 days and not start delivering benefits for almost 1,500 days.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. THUNE. That is what our motion would do: Synchronize the tax increases with the benefits.

I yield the floor.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that until the Democrats take over, we may continue to talk.

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

Mrs. HUTCHISON. Mr. President, to continue with the Senator from South Dakota, I am glad he made the point because we are very much hoping our amendment will be in the order when we start voting on the health care amendments.

The amendment is so clear; it is very simple. I have it here. For Washington, it is half a page. That is something everyone will be able to appreciate—the motion to commit with instructions:

Senator Hutchison and Senator Thune move to commit the bill to the Committee on Finance with instructions to report back to the Senate with changes to align the effective dates of all taxes, fees, and tax increases levied by such bill so that no such tax, fee, or increase takes effect until such time as the major insurance coverage provisions of the bill, including the insurance exchanges, have begun.

The committee is further instructed to maintain the deficit neutrality of the bill over the 10-year budget window.

That is what was promised. This was going to be deficit neutral. It is not deficit neutral. The cost of this bill is $2.5 trillion over the 10-year period when it starts, in 2014 until 2023. It is $2.5 trillion. The ''offset''—I put that in quotes because the offsets are $500 billion in tax cuts to Medicare, which will lower the ability of hospitals to stay in business and treat Medicare patients and doctors to be able to treat Medicare patients.

So the quality of Medicare is going to go down. Medicare Advantage will be severely restricted. So you have $500 billion in cuts to Medicare, and then you have $500 billion in tax increases and mandates. That is a total of $1 trillion in offsets in a bill that costs $2.5 trillion.

What the Senator from South Dakota and I are trying to do is let's keep our word. Let's keep our word and do two things that the American people should expect: No. 1, that we would not start the taxes until the program takes effect; No. 2, that it would be deficit neutral.

By my math, I ask the Senator from South Dakota, it looks to me like we are $1.5 trillion into the deficit, and we are already at a debt ceiling that is higher than we have had as a percentage of our GDP since World War II. So it is a $12 trillion debt ceiling we are hitting right now, and we are talking about a $1.5 trillion deficit in the bill we are being asked to vote for.

I ask the Senator from South Dakota, who is my cosponsor on this very important amendment, don't we owe the American people the transparency, as well as the policy, that we would eliminate the deficit and we would stop these disastrous taxes from taking effect, so maybe we would have a chance to change this product going forward in the next 4 years so the American people will not be saddled with these expenses, taxes, and mandates?

Mr. THUNE. We do want to get a vote—a vote on our amendment and on other amendments. Right now, that is being prevented or blocked. We haven't had a vote since Tuesday. We have amendments that are ready to go.

The other side said they are open to amendments and they want to get the bill moving forward, but we are being prevented from getting votes on amendments. In the meantime, this backroom deal that is being cut, which we haven't seen—supposedly it has been sent to the CBO to find out what it will cost. We are waiting for that deal to emerge. In the meantime, we are looking at a piece of legislation that costs $2.5 trillion when fully implemented.

As the Senator said, it relies on Medicare cuts and tax increases to finance it. Just yesterday, the chief actuary at the Center for Medicare and Medicaid Services basically said the savings that are relied upon, in terms of Medicare cuts, are unlikely to be sustainable on a permanent basis. They raise the question about whether those cuts are actually going to occur and, if they do, whether they will be sustained. If they are not, then you have the question of whether a lot of these providers out there—if the cuts do occur, and they continue to lose more and more every time they see a Medicare patient, then they are going to quit participating in the Medicare Program. You will have fewer providers offering services, making it more difficult for people—especially in places such as Wyoming and South Dakota—to get access to health care.

You are assuming all these cuts in Medicare are going to occur, and you are assuming all these tax increases. Even with all that, you have a $2.5 trillion expansion of the Federal Government, which inevitably is going to rely more and more on borrowing. You are going to see more and more of this going on the debt, and we will pass it on to future generations.

As CMS pointed out, it is unlikely these Medicare payment cuts are going to be sustainable without driving hospitals and doctors and other health care providers out of business. When they start reacting to this and those Medicare cuts are no longer sustainable, then you have built in all this new spending, and there is no way to pay for it without raising taxes dramatically, which would be, I guess, something the other side—since they have already demonstrated a significant willingness to raise taxes in this bill or borrowing, neither of which is good for the future of the country or our economy.

Right now, our economy is trying to come out of a recession. Small businesses, which create the jobs in our economy, are faced with higher taxes under this bill. They have come forward and said—every conceivable business is saying this will drive up the cost of doing business, and it will raise the cost of health care in this country.

So you have all these small businesses saying we are not going to be able to create jobs. You have that specter out there. You also have the idea of the Medicare cuts, which are, according to the CMS actuary, unlikely to be sustainable, leading to borrowing and debt, which means we are already running a $1 trillion deficit every year and piling more on the Federal debt and there will be a movement here to raise the debt limit by almost $2 trillion. So we will pass this on to future generations, future young Americans, who are going to bear the cost of this massive expansion of the Federal Government.

There isn't anything in this that is good for the American public, which is why they are reacting the way they are, and why you are seeing these 61 percent of Americans coming out in the polls against it.

I say to my friend from Wyoming, his thoughts with regard to this issue, these Medicare cuts being sustainable, how it is going to impact the delivery of health care around this country, and what it will do to future generations in terms of the additional debt and borrowing.

Mr. BARRASSO. As my friend knows, small communities——

Mrs. HUTCHISON. I am sorry to interrupt my friend. I ask unanimous consent that he have 1 minute to finish, after which the floor would go to the majority.

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

Mr. BARRASSO. To follow up, the small communities of this Nation have great concerns about these cuts in Medicare because the small community hospitals that stay open know they have to live within their means. When Medicare cuts total over almost $½ trillion, it is the small communities that have just one hospital in a frontier medicine mode taking care of people who may live 50, 100, or 150 miles away, those hospitals' very survivability is at stake.

That is why we cannot pass this bill, which will hurt seniors, raise taxes on the American people, cost jobs, and cause people who have insurance to have their premiums raised. For all these reasons, this bill is the wrong prescription for America.

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

Mr. DORGAN. Mr. President, first of all, I ask unanimous consent that the amount of time by which the other side went over the allotted time be added to our block of time.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

## PRESCRIPTION DRUG PRICING

Mr. DORGAN. Mr. President, I have come to the floor to speak about something a colleague of mine spoke about last night, which I think he believes separates us when, in fact, it doesn't.

Before I do that, I wish to talk for a moment about the amendment of mine now pending on the floor of the Senate, dealing with the issue of prescription drug pricing.

I offered this amendment, along with my colleague, Senator SNOWE, with the support of a broad bipartisan group of Members of the Senate—Republicans and Democrats—at a time when there has been so few bipartisan amendments. The amendment I have offered is, in fact, bipartisan and had bipartisan speeches in favor of it in the last several days. That is unusual, but I think it is also refreshing.

The amendment is very simple. It has been around for a long time. It has been hard to get passed because the pharmaceutical industry is a very strong, assertive industry. It is a good industry, but I have strong disagreements with their pricing policies. This amendment simply says the American people ought to have the freedom to access FDA-approved drugs wherever they are sold—as long as they are FDA approved—and offered at a fraction of the price they are sold at in the United States.

I ask unanimous consent to show on the floor, once again, two bottles of pills.

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

Mr. DORGAN. This bottle contained Lipitor, perhaps the most popular cholesterol-lowering drug in the world. This was made by an American company in an Irish plant—made in Ireland and shipped around the world. This bottle, as you can see, is identical to this one. One has a red label and one has a blue label.

The only difference in a circumstance, where you have the same pill, put in the same bottle, made by the same company, is the price. Americans pay $4.78 per tablet and, in this case, folks in another country pay $2.05. Why the difference? Again, it is not just one country. This bottle is shipped to virtually every other country, including Great Britain, France, Germany, Spain, Canada, and it is sold at a much lower price.

The question is, Should the American people be required to pay the highest prices in the world for prescription drugs and not have the freedom to access those drugs in the global marketplace?

Some say: Well, if you did that—if you allow the American people to access that drug from Canada or Germany at a fraction of the price, we would get counterfeit drugs.

It is interesting that in our amendment we actually have more safety provisions than exist in our domestic drug supply. There does not now exist a tracing capability, pedigree, or batch lots. That would be a part of our amendment. That doesn't exist for America's drug supply today. We will actually improve the safety of the drug supply with this amendment.

I didn't offer this amendment to cause trouble for people. I know this is causing great angst in the Senate. We have been tied up several days now on this issue. I know the pharmaceutical industry has a great deal of clout. This issue revolves around $100 billion, $19 billion of which will be saved by the Federal Government in the next 10 years and nearly $80 billion saved by the American consumers because they can access FDA prescription drugs at a fraction of the price.

So I understand why some are fighting hard to prevent this. But this is important public policy. The price of prescription drugs has gone up 9 percent this year alone. Every single year, the price of prescription drugs goes up. Every year since 2002, drug price increases have risen above the rate of inflation. We can't, in my judgment, pass health care reform through the Congress and say: Yes, we did that, but we did nothing about the relentless increases in the price of prescription drugs. We will solve that not by imposing price controls but by giving the American people freedom. They are told it is a global economy. Well, it is a global economy for everything except the American people trying to access prescription drugs at a fraction of the price in most other countries.

Again, I didn't offer this amendment to try to cause trouble; I offered this amendment to try to solve a problem. This Congress should not, in my judgment, move ahead with health care reform and decide it ought to leave the question of the American people paying the highest prices for prescription drugs—leave that alone and let that continue to be the case for the next 10 years or the next 20 years. I will speak more about it later.

## TRADE WITH CUBA

Mr. DORGAN. Mr. President, I came to the floor to speak about a speech a colleague, for whom I have great affection, gave yesterday on the floor of the

Senate. He was concerned about a provision in the appropriations bill that is now being considered, a provision dealing with the sale of agricultural commodities to Cuba.

My colleague said the provision would undo current law, where the Castro regime in Cuba would have to pay in advance for goods being sold to them because of their terrible credit history.

That is not an accurate statement. I expect there is just a misunderstanding. I would be very happy if my colleague would wish to have a colloquy on the floor to set out the law and the provision in the bill so all of us understand the same thing.

No. 1, I helped write the law that finally opened just a small crevasse—the ability of our farmers in America to sell their agricultural commodities into the Cuban marketplace. Why did I do that? Because we have an embargo on Cuba that, in my opinion, has failed for 40 or 50 years. At the time that embargo included restricting the sale of food to the Cuban people.

I do not think we ought to ever embargo food shipments anywhere in the world. I think it is immoral. I do not think we ever ought to use food as a weapon. Yet that is exactly what has been done.

Our farmers could not sell agricultural commodities into Cuba. Canadian farmers could. French farmers could. German farmers could. American farmers could not.

I changed the law, along with a Republican colleague, with a Dorgan-Ashcroft amendment. We changed the law. We opened it just a crack so American farmers could sell their commodities into the Cuban marketplace. But it had to be for cash. The Cubans had to pay cash in advance. I support that. I helped write the law.

In fact, what I would like to do is put up a copy of the current law. The current law indicates ''cash in advance.'' We have sold about $3 billion of agricultural commodities into the Cuban marketplace since the law was passed, and they have paid cash in advance.

What happened was, President Bush decided just prior to an election that he wanted to send a signal that he was really tightening things with Cuba. He decided to change the definition—not by law but by administrative fiat—and he said ''cash in advance'' will mean the Cubans have to pay for the commodity even before it is shipped from a port in the United States. For four years up to then, the government allowed U.S. farmers to ship the goods from the port and then have the Cubans pay cash when the commodity arrives in Cuba. The President made that change as an attempt to shut down the sale of agricultural commodities to Cuba.

Here is what the Calgary Herald, a Canadian newspaper, said: ''Cuba to Buy $70 Million of Canadian Wheat.'' Then in the body of the article it says:

> Cuban food purchases from Canada will increase 40 percent this year due to difficulties buying from the United States which is requiring payment before shipment of the food sales.

As I said, President Bush tightened the rules to say that ''cash in advance,'' in a law I wrote, shall be interpreted as meaning you must pay even before the shipment. I have never even considered the phrase could be interpreted like that, but that is the way the law is now being administered.

In the pending appropriations bill, there is an amendment I included. It is not, in my judgment, something we ought to debate. It is just there. We ought to understand it. It very simply says this.

> During fiscal year 2010, for purposes of . . . the Trade Sanctions Reform and Export Enhancement Act of 2000 . . . the term ''payment of cash in advance'' shall be interpreted as payment before the transfer of title to, and the control of, the exported items to the Cuban purchaser.

It takes the definition of ''payment of cash in advance'' back it to how it was originally interpreted after I got my bill passed and we started selling into the Cuban marketplace. It restores it to what it was.

My colleague yesterday said this would undo the current law where the Castro regime would have to pay in advance. Obviously, that is not the case. It is just not the case. ''Payment of cash in advance shall be interpreted'' to mean ''payment before the transfer of title to, and control of, the exported items . . . '' There is nothing here suggesting credit be offered to the Cuban regime. This only resolves an issue that was created when President Bush wanted to shut off agricultural commodity shipments to the country of Cuba. As I indicated, the result of the Bush administration's interpretation is what the Calgary Herald wrote about: American farmers, watch the Canadians grab your market.

Why on Earth should we withhold food shipments anywhere? It makes no sense to me. Why should we say to our farmers who produce foods—and we need to export that food—that the Canadians can have an advantage, the Europeans can have an advantage, they can service that market but we cannot, even though we require cash in advance. Lets make it even harder by requiring payment before shipping even. That makes no sense to me. That is why I wanted to correct it. I wanted to correct it to get it back to what the law reads.

My colleague who spoke on this issue yesterday is a good Senator and somebody I like a lot, but he indicates that this amendment of mine undoes current law where the Castro regime would have to pay in advance. That is just not the case. That is not the case.

Maybe the best way for us to resolve this is, let's do a colloquy on the floor to put in the RECORD the exact language, because the shipment of agricultural commodities to Cuba in the future will continue to require cash payments in advance. That is just a fact.

Let me say also, my colleagues—I use the term plural—who feel very strongly about this issue, the Cuba issue, we have common cause. I have no truck for the Cuban Government. I want the Cuban people to be free. I have no sympathy for the Cuban Government. But it is interesting to me that our engagement with Communist China and Communist Vietnam, for example, is to say that constructive engagement through trade and travel is the best way to address those issues. We believe that. Except we say in Cuba that we do not believe it. We restrict the right of the American people to travel to Cuba, which is slapping around the rights of the American people in order to poke our finger in the eye of Fidel Castro, I guess. And we do other things that make no sense.

My colleagues who have raised these issues actually won on one issue that kind of bothers me. I also put an amendment in this legislation that I understand now has been emasculated. Let me describe what that was.

Most people do not know this, but we have airplanes flying over Cuba, at least in international waters, broadcasting television signals to Cuba. I was able to get that shut down in an amendment in the appropriations process because we are broadcasting television signals to Cuba to tell the Cuban people how great freedom is—they can hear that on a Miami station 90 miles away—but we are broadcasting television signals being broadcast by an airplane and the signals are signals the Cuban people cannot see. Isn't that interesting? It is called TV Marti. Here is a picture of what TV Marti broadcasts. That is the television screen for TV Marti. The Cubans block it easily, and the Cuban people do not see it and cannot see it.

We started out broadcasting that with aerostat balloons. They called it Fat Albert. This is the second one. The first one got loose. Fat Albert got loose. It was tethered on a big, long tether, hanging way up in the air, to broadcast television signals to the Cuban people that the Cubans were blocking. So we are spending a lot of money broadcasting television signals that nobody can see. In the first case, we had aerostat balloons, huge balloons, tethered way up in the air, spending millions of dollars a year. One got loose and flew over the Everglades, and they had a devil of a time trying to capture Fat Albert. So they got a second Fat Albert and kept broadcasting signals no one could see. But that wasn't good enough. In fact, they decided: You know what, we are going to get ourselves a big fat airplane and we will fly that airplane around and broadcast signals to Cuba from an airplane. And those signals, too, by the way, are routinely blocked and no one can see them. In my judgment we should not waste that kind of money.

John Nichols, professor of communications and international affairs at Penn State University had this to say.

He is one of the experts on communications policy.

TV Marti's quest to overcome the laws of physics has been a flop. Aero Marti, the airborne platform for TV Marti, has no audience currently in Cuba, and it is a complete and total waste of $6 million a year in taxpayer dollars.

The $6 million is just for the airplane. They spend much more than that on TV Marti.

It is a total and complete waste of $6 million a year in taxpayer dollars. The audience of TV Marti, particularly the Aero Marti platform, is probably zero.

We have been doing this for 10 years and more. Since I raised this issue, we have spent $¼ billion broadcasting television signals into a country that cannot see them.

Let me continue:

TV Marti's response to this succession of failures over a two-decade period has been to resort to ever more expensive technological gimmicks, all richly funded by Congress, and none of those gimmicks, such as the airplane, have worked or probably can work without the compliance of the Cuban Government. It is just the law of physics.

In short, TV Marti is a highly wasteful and ineffective operation.

I put in an amendment that cut $15 million out of this program. I know it is radical to say you should not broadcast to people who cannot see them. I suspect this must be considered some sort of jobs program. That would be the only excuse for continuing funding.

I had an amendment that shut down TV Marti. If ever—ever, ever—there were an opportunity to cut government waste, this is it. This is just a program that accomplishes nothing and has no intrinsic value at all. But in the middle of a very significant economic downturn, when deficits have spiked up, up, way up, I apparently cannot even get this done. I got it done in the Senate, but it did not get through the conference. I guess for the next year or so—Fat Albert is retired—the airplane will still fly. And here is a television set in Cuba sees of TV Marti snow, static. We will continue to spend $15 million or so so the Cubans can look at static on their television sets. It is not much of a bargain for the American taxpayer, I would say.

I only point this out because I lost on this issue. Those who feel strongly that we ought to continue to do this won. I hope that one day, perhaps we could agree that when we spend money, let's spend it on things that work, spend it on things that are effective, spend it on things that advance our interest and our values. This certainly does not.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Pennsylvania.

## HEALTH CARE REFORM

Mr. CASEY. Mr. President, I rise this morning to speak about health care and our children and the health care reform, the Patient Protection and Affordable Care Act, as relates to our children.

The chart on my left makes a couple of fundamental points.

For children, health care reform must follow one simple principle, and I also say it is only four words: No child worse off. When I say ''no child,'' of course I am speaking of children who do not often have a voice. Obviously, if they are children from a family that is very wealthy, I think they will be just fine no matter what happens here. But children who are poor and children who experience and have to live with special needs are the ones I am talking about when I say ''no child worse off.''

I filed many weeks ago—actually, months ago now—a joint resolution, No. 170. I was joined in that resolution by Senator DODD, Senator ROCKEFELLER, Senator BROWN, Senator WHITEHOUSE, and Senator SANDERS. We filed that resolution just to make this point with a couple more words than ''no child worse off,'' but that was the fundamental point to guide us through this process because sometimes in a debate on something that is this significant, and parts of it are complicated to be enacted into law—it is a challenge to pass health care reform. I think we will. I think we must. But we do need guiding principles, and I believe one of these should be ''no child worse off'' for special needs children.

A lot of the child advocates across America have told us, for many years, something so simple but something very meaningful in terms of providing further guidance for this debate. Children are not small adults. That does not sound so profound, but it really matters when it comes to health care. We can't just say: If you have a health care plan for adults, it will work for kids, do not worry about it. Unfortunately, that is not the case.

If we do not do the right thing, we could lose our way on that basic principle. We have to get it right, and we have to give poor and special needs children a voice in this debate. I do not think there is any question that Senators on this side of the aisle are guided by that basic principle.

I want to next turn to the bill, the Patient Protection and Affordable Care Act, and walk through some of the provisions. There are many good provisions in the bill for children, but I want to walk through a couple.

How does it help children? That is a fundamental question. You cannot escape the basic implications of that. First, the bill eliminates preexisting condition exclusions. That is in the first couple pages of the bill. Obviously, it has an enormously positive impact for adults. We have heard story after story of literally millions of Americans denied coverage year after year because of the problem of preexisting conditions. It has special meaning when it comes to children.

No. 2, the bill ensures that benefits packages include oral and vision care. We know what that means for children, and in particular we are thinking about the horrific, tragic, and preventable death recently of Deamonte Driver of Maryland, a young boy who lost his life because his family did not have the coverage for an infected tooth—an infected tooth, not something that is complicated to deal with. His family couldn't afford the care. A child in America died from an infected tooth that would have cost $80 to treat.

So when we talk about insuring benefit packages that include oral and vision care, that doesn't say it too well until you connect it to the life and the death—the tragic death—of a young child not too far from Washington, DC.

Thirdly, the Patient Protection and Affordable Care Act will mandate prevention and screenings for children. This is so important. We know our poorest children, who have the benefit of being covered by Medicaid, get these kinds of services so we can prevent a child from getting sicker or prevent a disease or a condition or a problem from becoming that much worse for that child.

As I said before, children are not small adults, so we have to make sure we have strategies and procedures in place that deal with the special needs and the special challenges that children face in our health care system.

Finally, the act has increasing access to immunizations. I don't think I have to explain to any American how important immunizations are. The Centers for Disease Control will provide grants to improve immunizations for children, adolescents, and adults.

Let me move to the third chart. The third chart outlines some other provisions for children. Here are three more ways the Patient Protection and Affordable Care Act helps children, among many others. It creates pediatric medical homes. People may say: What is a medical home? What does that mean? Well, I need simplicity just like anyone does. This is my best summary of a medical home.

A medical home obviously isn't a place. It is treating people in the way they ought to be treated in our health care system. The ideal—and I think this bill gets us very close to meeting this goal—is that every American should have a primary care physician and then be surrounded by the expertise of our health care system. Children especially need that kind of help. So we want to make sure every child not only has a primary care physician—in this case a pediatrician—but also has access to all of the expertise that pediatricians and our system can give them access to.

Next, the act strengthens the pediatric workforce. We can't just say we want children to have access to pediatric care. We have to make sure we have the workforce in America to provide that kind of care.

Thirdly, the act expands drug discounts to children's hospitals. Before this act, before the act that we are debating, children's hospitals did not have access to a program that provides discounts on the drugs they need for

sick children. Now children will benefit from the discounted prices that result from the passage of this act. This is vitally important.

Let me go to one more chart.

Parliamentary inquiry, Mr. President: How much time do I have remaining?

The ACTING PRESIDENT pro tempore. Two minutes.

Mr. CASEY. Two minutes. I will just do one chart and then we will move quickly.

This chart makes a very fundamental point. At a time in our history when over the course of a year the national poverty rate went up by 800,000, and the number of people without insurance is going up—and in the midst of a recession, you would understand and expect that—the one thing we don't focus on is that because of the effectiveness of the Children's Health Insurance Program, there is one number on this chart that is going down—and we hope it keeps going down—and that is the number of uninsured children.

It is interesting that on this chart between 2007–2008, as the child poverty rate went up by 800,000 children, the number of children without insurance is down by that same number—800,000. It shows the Children's Health Insurance Program is working, even in the midst of a recession. So I have an amendment that strengthens the Children's Health Insurance Program in the bill.

I know I am out of time, Mr. President, and I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, it is my understanding that we have gone over the original allocation of time, and Senator MCCAIN is coming to the floor. We will, of course, offer to the minority side whatever extra time we will use so that there will be a like amount available to them, and I will make every effort to shorten my remarks.

The ACTING PRESIDENT pro tempore. The majority has not exceeded its time. There is 12 minutes remaining on the clock.

Mr. DURBIN. Sorry, I was misinformed. But whatever we promised the minority side, they will receive like treatment on whatever time we use.

## UNANIMOUS CONSENT REQUEST—H.R. 3590

Mr. DURBIN. Mr. President, yesterday, the majority leader propounded a unanimous consent request to have four votes with respect to the health care bill. The Republican leader objected to the consent, since he indicated they had just received a copy of Senator LAUTENBERG's side-by-side amendment to the Dorgan amendment and so they needed time to review the amendment.

Therefore, I now ask unanimous consent that following the period of morning business today, the Senate resume consideration of H.R. 3590 for the purpose of considering the pending Crapo amendment to commit and the Dorgan amendment, No. 2793, as modified; that Senator BAUCUS be recognized to call up a side-by-side amendment to the Crapo motion; that once that amendment has been reported by number, Senator LAUTENBERG be recognized to call up his side-by-side amendment to the Dorgan amendment, as modified; that prior to each of the votes specified in the agreement, there be 5 minutes of debate equally divided and controlled in the usual form; that upon the use or yielding back of the time, the Senate proceed to a vote in relation to the Lautenberg amendment; that upon disposition of the Lautenberg amendment, the Senate then proceed to vote in relation to the Dorgan amendment; that upon disposition of that amendment, the Senate proceed to vote in relation to the Baucus amendment; and that upon disposition of that amendment, the Senate proceed to vote in relation to the Crapo motion to commit; that no other amendments be in order during the pendency of this agreement, and that the above referenced amendments and motion to commit be subject to an affirmative 60-vote threshold; that if they achieve that threshold, they then be agreed to and the motion to reconsider be laid upon the table; if they do not achieve that threshold, they then be withdrawn.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. ENZI. Mr. President, reserving the right to object, we are going to have three Democratic amendments and one Republican amendment voted on, and the Democrats wrote the bill. The Democrats are doing a side by side to their own amendment.

It looks to me like they ought to get together and get some things figured out. There ought to be a little bit more fairness on the number of amendments. So I object.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DURBIN. Mr. President, this is the second time we have offered to call amendments for a vote, and the complaint from the other side is, you are not calling amendments for a vote.

How many times do we have to ask for permission to call amendments for a vote, run into objections from the Republican side, and then hear the speech: Why aren't we voting on amendments?

I am certain that in the vast expansion of time and space, we can work out something fair in terms of the number of amendments on both sides. In fact, maybe the next round will have more Republican amendments than Democratic amendments. I don't know how many Republican amendments or Democratic amendments we have voted on so far. We can get an official tally, but that really seems like a very minor element to stop the debate on health care—because we need to have an equal number of amendments. Can't grownups work things out like this and with an understanding that we will resolve them? If we can't, then for goodness' sake don't subject us to these arguments on the Senate floor that we are not calling amendments for a vote. We have just tried 2 days in a row, and the Republicans once again have stopped us with objections. That is a fact.

I would implore the leadership—not my friend from Wyoming; I know he is doing what he is instructed to do by the leaders—for goodness' sake, let's break this logjam. Let's not, at the end of the day, say, well, we stopped debating this bill when we should have been debating it, when we have offered 2 days in a row in good faith to have actual amendments offered and debated.

I would also say, Mr. President, this is the bill we are considering, H.R. 3590, when we return to it. This is the health care reform bill, and this is a bill which has been the product of a lot of work. A lot of work has gone into it both in the House and in the Senate. In the Senate, two different committees met literally for months writing this bill, and they should take that time because this is the most significant and historic and comprehensive bill I have ever considered in my time in Congress—more than 25 years. This bill affects every person in America—every person in the gallery, everyone watching us on C–SPAN, every person in America. It addresses an issue that every American is concerned about—the future of health care, how we are going to make it affordable.

At a time when fewer businesses offer the protection of health insurance, at a time when individuals find themselves unable to buy health insurance that is good and that they can afford; at a time when health insurance companies are turning down people right and left for virtually any excuse related to preexisting conditions, we cannot continue along this road. Those who are fighting change, those who are resisting reform, are basically standing by a broken system.

There are many elements in American health care that are the best in the world, but the basic health care system in America is fundamentally flawed. This is the only civilized Nation on Earth where you can die for lack of health insurance—literally die.

Mr. President, 45,000 people a year die because they do not have the health insurance they need to bring them to the doctor they need at a critical moment in life. They do not have the health insurance they need to afford the surgical procedure they need to avoid a deadly disease.

If a person has a $5,000 deductible on their health insurance, and a doctor tells them—as a man who wrote me from Illinois said—you should have a colonoscopy, sir; there is an indication you could have a problem that could develop into colon cancer and it could be fatal.

The man says: How much is the colonoscopy?

Well, it is $3,000 out of pocket.

The man says: I can't afford it. I just can't pay for it.

So he doesn't get the colonoscopy and bad things can occur. That happens in America, but it doesn't happen in any other civilized country.

It is true in some systems he may have had to wait an extra week or a month, but he gets the care he needs. He doesn't die for lack of health insurance. That is what is going on in America. Almost 50 million Americans without health insurance today—almost 50 million in this great and prosperous Nation—went to bed last night without the peace of mind of the coverage of health insurance. This bill addresses that.

At the end of the day, 94 percent of the people living in America will be able to sleep at night knowing they have a decent health insurance plan. That is an amazing step forward. That is a step consistent with the establishment of Social Security, which finally took the worry away from seniors and their families about what would happen to grandma and grandpa when they stopped working.

I remember those days. There was a time when grandma and grandpa retired and moved in with their kids. Remember that era? I do. It happened in our family, and they didn't have any choice. They had to because they had modest jobs and not a lot of savings and they put it on their kids to find that spare bedroom or let them sleep in basement that was made over so that they would have a comfortable and safe place to be.

Social Security changed that for most American families. This bill will change health care for most American families. The same thing is true with Medicare. The critics of Medicare—and they have been legion on the floor of the Senate—ignore the obvious: 45 million Americans will have peace of mind to know that they can get affordable health care once they reach the age of 65. They would not lose their life savings. They will get a good doctor, a good hospital, and a good outcome.

Isn't that what America is all about? Isn't that why we are supposed to be here? Why don't we have more support? The Republican side of the aisle only comes to say what is wrong with the idea of health care.

Steven Pearlstein, in this morning's Washington Post—which I hope some of my Republican colleagues will read—talks about a lost opportunity which the Republicans have.

We have invited the Republicans from day one to be part of the conversation about health care reform. Senator ENZI of Wyoming is one who assiduously gave every effort, spent 61 days trying to reach a bipartisan agreement. It failed, but at least he tried. I commend him for trying.

Too many others on the other side didn't try. But Steven Pearlstein writes:

> One can only imagine how Republicans could have reshaped health-reform legislation in the Senate . . . Without question, they could have won more deficit-reducing cost savings in the Medicare program by setting limits on spending growth and reforming the way health care is organized, provided and paid for. And they could have begun to realize their goal of ''consumer-driven health care'' by insisting that the new insurance exchanges offer at least one plan built around individual health savings accounts and catastrophic coverage.

Pearlstein goes on to talk about the possibilities. He says:

> They could have taken a page from John McCain's platform and insisted on replacing the current tax exclusion of health-care benefits with a flat tax credit that would be more progressive and put downward pressure on insurance premiums.

I am not guaranteeing that any of those proposals would have been in, but they all could have been in if we had a dialog. Instead of a dialog, we have a shouting match, one side of the aisle shouting at the other side of the aisle. It is exactly the stereotype of Washington which America has come to hate. America wants us to solve problems, not get into these, you know, fur-flying debates, where we see who can get the rhetorical better of the other. They want us to solve problems but, unfortunately, we are still waiting for the first Republican to cross the aisle on the passage of this bill and work with us. The door is still open. The invitation is still there. The idea of doing nothing is unacceptable and that should be the message.

The fact is, there is no comprehensive Republican health care reform bill—period. Senators come to the floor, such as Senator COBURN, and say: I have some good ideas. I bet he does. I may even subscribe to them. But his ideas have not gone through the rigor this bill has gone through. This bill was sent to the Congressional Budget Office and scored, asking the basic questions: No. 1, will it add to the deficit? They came back and told us: No, the Democratic health care reform bill will, in fact, save money, $130 billion in 10 years; $650 billion in the second 10 years. We asked them: Is it going to insure more Americans? They came back and said: Yes, 94 percent will be insured when this is over. That same rigor has not been applied to the Republican ideas because it is hard, it is tough, and it takes time. I commend them for their thoughtful ideas, but to say they have something they can match against this bill, comprehensive reform—just go to the Republican Senate Web site and look for the Republican comprehensive reform bill. Do you know what you will find? You will find the Democratic bill. That is all they can talk about. They don't have a comprehensive health care reform bill.

But we are not going to quit. America, we cannot go home for Christmas until we get this job done.

After we have been here 12 straight days debating, we kind of get into a trance-like, catatonic state, where we can't remember what our last speech was about and we go to sleep at night thinking about what we might have said on the floor or what we are going to say tomorrow. But the fact is, we have to stay and do our job, not just in passing health care reform but doing something significant to help the unemployed and deal with jobs and the economy before we leave here to try to enjoy Christmas, or what is left of it or the holiday season, with our families.

This is a job that has to be done. I am sorry we have reached a point where the Republicans have not been actively involved in creating this bill. We tried for the longest time. In the HELP Committee, where Senator ENZI serves as the ranking Republican, more than 100 Republican amendments were accepted as part of this debate and still not one single Republican Senator would vote for the bill in that committee.

So far the scorecard on Republican participation in health care reform debate is a lot of speeches, a lot of press releases, a lot of charts on the floor but only two votes—one from a Republican Congressman in Louisiana for the House bill; one from Senator SNOWE of Maine for the Senate Finance version of this bill.

The ACTING PRESIDENT pro tempore. The time of the majority has expired.

Mr. DURBIN. That is it. I urge my colleagues to join us in a cooperative effort to try to come up with something more positive than just our lonely speeches on the floor.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, while my friend from Illinois——

Mr. DURBIN. Mr. President, I ask unanimous consent morning business be closed. I wish to make sure Senator MCCAIN has time.

Mr. MCCAIN. I ask for an additional 10 minutes of morning business so I could maybe engage in a colloquy with my favorite combatant here.

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

Mr. MCCAIN. Maybe we can talk a little bit about his remarks.

I have to say, I appreciate the eloquence and the passion the Senator from Illinois has brought to this debate. He makes some very convincing points. One of the major points—and I would be glad to listen to the Senator. I think it is fair for us to respond to each other's comments very quickly. The Senator from Illinois said we have been engaged in the negotiations and inputs have been made into the formulation of this bill.

I have to tell the Senator from Illinois, I have been engaged in many bipartisan compromises, whether it be issues such as campaign finance reform, whether it be—a whole large number of issues, including defense weapons acquisition reform. I say to the Senator from Illinois, do you know what the process was? People sat down

at the table together when they were writing the legislation. I am a member of the HELP Committee, OK? I say to the Senator from Illinois, do you know what the process was—because I am on the committee. A bill was brought before the committee without a single—Senator ENZI will attest to this—without a single period of negotiations, where we sat down together with the chairman of the committee, where they said: What is your input into this legislation?

We had many hours of amendments in the committee, all of which, if they were of any real substance, were rejected on a party-line vote.

I have to tell the Senator from Illinois he can say all he wants to that there have been efforts to open this to bipartisanship. There have not. My experience in this Senate—I know how you frame a bipartisan bill and that has not been the process that has been pursued by the majority.

I understand what 60 votes mean. But in all due respect, I say to the eloquence of my friend from Illinois, that has not been the process which I have successfully pursued for many years, where people have sat down together at the beginning, where you are there on the takeoff and also then on the landing.

I would be glad to hear the response of the Senator from Illinois.

I ask unanimous consent if the Senator and I could engage in a colloquy.

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

Mr. DURBIN. First, those who are watching, this is perilously close to a debate on the floor of the Senate, which rarely occurs in the world's most deliberative body, where Senators with opposing views actually, in a respectful way, have an exchange. I thank the Senator——

Mr. MCCAIN. Respectful but vigorous.

Mr. DURBIN. I thank the Senator from Arizona. Here is what I understood happened. I know Senator DODD came to the HELP Committee with a base bill to start with, but it is my understanding, in the process, 100 Republican amendments were accepted on that bill. If I am mistaken, I know the Senator will correct me, but——

Mr. MCCAIN. I will be glad to correct the Senator from Illinois. Senator ENZI is here. None of those amendments were of any significant substance that would have a significant impact on the legislation, I have to say to the Senator from Illinois. For example, medical malpractice, we proposed several amendments that would address what we all know, what the Congressional Budget Office says is $54 billion—other estimates as much as $100 billion—in savings. There were no real fundamental amendments.

I have to say that some of those amendments were accepted. But it still doesn't change the fact that at the beginning, as the Senator from Illinois said—the bill came to the committee without a bit, not 1 minute of negotiation before the bill was presented to the committee. The ranking member is on the floor. He will attest to that. Please go ahead.

Mr. DURBIN. I would say to the Senator from Arizona, I went through bankruptcy reform with Senator GRASSLEY and a similar process was followed when the Republicans were in the majority. He produced the base-line bill, and I made some modifications and, ultimately, at one point in time, we agreed on a bill, came up with a common bill. The starting point is just that, a starting point. But I say to the Senator from Arizona, look at what happened to the issue of public option. I believe in public option passionately. I believe it is essential for the future of health care reform, for competition for private health insurance companies to give consumers a choice, to make sure we have one low-cost alternative at least in every market. Yet, at the end of the day, I did not get what I wanted and what is being proposed, now at the Congressional Budget Office, is not my version of public option.

We ended up bending toward some of the more moderate and conservative members of the Democratic caucus and toward the Republican point of view. I don't know of a single Republican who came out for public option. Maybe I am forgetting one. At the end of the day, the point I am making to the Senator is there was an effort at flexibility and an effort at change to try to find some common ground. Unfortunately, the ground we are plowing has only 60 Democratic votes. It could have been much different. It could still be much different.

Mr. MCCAIN. May I ask my friend, wasn't the reason the public option was abandoned was not because of a Republican objection, it was because of the Democratic objection? The Senator from Connecticut stated, unequivocally, the public option would make it a no deal.

I appreciate the fact that Republican objections were observed. But I don't believe the driving force behind the abandonment of this public option, if it actually was that—we have not seen the bill that is going to come before us—was mainly because of the necessity to keep 60 Democratic votes together.

Mr. DURBIN. The Senator from Arizona is correct. But I add, Senator SNOWE has shown, I believe, extraordinary courage in voting for this bill in the Senate Finance Committee and made it clear she could not support the public option. We are hoping, at the end of the day, she will consider voting for health care reform. That was part of the calculation.

Mr. MCCAIN. We are hoping not.

Mr. DURBIN. I understand your point of view, but I would say—you are right. But we were moving toward our 60 votes, but it would be a great outcome if we end up with a bill that brings some Republicans on board, and it was clear we couldn't achieve that if we kept the public option in. There are other elements here. We are going to have a real profound difference when it comes to the issue of medical malpractice and how to approach it. But I think, even on that issue, we could have worked toward some common ground, and I hope someday we still can.

Mr. MCCAIN. Could I ask my friend about the situation as it exists right now? Right now, no Member on this side has any idea as to the specifics of the proposal the majority leader, I understand, has sent to OMB for some kind of scoring. Is that the way we want to do business, that a proposal that will be presented to the Senate sometime next week and voted on immediately—that is what we are told—is that the way to do business in a bipartisan fashion? Should we not at least be informed as to what the proposal is the Senate majority leader is going to propose to the entire Senate within a couple days? Shouldn't we even know what it is?

Mr. DURBIN. I would say to the Senator from Arizona, I am in the dark almost as much as he is, and I am in the leadership. The reason is, because the Congressional Budget Office, which scores the managers' amendment, the so-called compromise, has told us, once you publicly start debating it, we will publicly release it. We want to basically see whether it works, whether it works to continue to reduce the deficit, whether it works to continue to reduce the growth in health care costs.

We had a caucus after this was submitted to the Congressional Budget Office, where Senator REID and other Senators who were involved in it basically stood and said: We are sorry, we can't tell you in detail what was involved. But you will learn, everyone will learn, it will be as public information as this bill currently is on the Internet. But the Congressional Budget Office has tied our hands at this point putting it forward. Basically, what I know is what you know, having read press accounts of what may be included.

Mr. MCCAIN. Could I ask my friend from Illinois—and by the way, I would like to do this again. Perhaps when he can get more substance into many of the issues.

Mr. DURBIN. Same time, same place tomorrow?

Mr. MCCAIN. I admit these are unusual times. But isn't that a very unusual process, that here we are discussing one-sixth of the gross national product; the bill before us has been a product of almost a year of sausage-making. Yet here we are at a position on December 12, with a proposal that none of us, except, I understand, one person, the majority leader, knows what the final parameters are, much less informing the American people. I don't get it.

Mr. DURBIN. I think the Senator is correct, saying most of us know the

fundamentals, but we do not know the important details behind this. What I am saying is, this is not the choice of the majority leader. It is the choice of the Congressional Budget Office. We may find that something that was sent over there doesn't work at all, doesn't fly. They may say this is not going to work, start over. So we have to reserve the right to do that, and I think that is why we are waiting for the Congressional Budget Office scoring, as they call it, to make sure it hits the levels we want, in terms of deficit reduction and reducing the cost of health care.

It is frustrating on your side. It is frustrating here. But I am hoping, in a matter of hours, maybe days, we will receive the CBO report.

I would like to ask the Senator from Arizona, if he wouldn't mind responding to me on this. Does the Senator believe the current health care system in America is sustainable as we know it, in terms of affordability for individuals and businesses? Is the Senator concerned that more and more people do not have the protection of health insurance; fewer businesses offer that protection?

The ACTING PRESIDENT pro tempore. The 10-minute time period has expired.

Mr. McCAIN. I ask unanimous consent for 5 additional minutes.

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

Mr. DURBIN. Is the Senator concerned as well with the fact that we have 50 million Americans without health insurance and the number is growing; that in many of the insurance markets across America there is no competition, one or two take-it-or-leave-it situations? Does that lead him to conclude we cannot stay with the current system but have to make some fundamental changes and reforms?

Mr. McCAIN. I say to my friend, everything he said is absolutely correct. I am deeply concerned about the situation of health care in America. I know the Senator from Illinois is deeply concerned about the fact that it is going to go bankrupt, about the fact that the Medicare trustees say that within 6 or 7 years it is broke. From what we hear, there is now a proposal over there to extend eligibility for Medicare, which obviously puts more people in the system, which obviously, under the present setup, would accelerate a point of bankruptcy, at least from what I know of this.

But the fundamental difference we have, in my opinion, is not what we want—we both share the deep ambition that every American has affordable and available health care—it is that we believe a government option, a government takeover, a massive reorganization of health care in America will destroy the quality of health care in America and not address the fundamental problem. We believe the quality is fine.

We think the problem is bringing costs under control. When you refuse to address an obvious aspect of cost savings such as malpractice reform, such as going across State lines to obtain health insurance, such as allowing small businesses to join together and negotiate with health care companies, such as other proposals we have, then that is where we have a difference. We share a common ambition, but we differ on the way we get there. I do not see in this bill, nor do most experts, a significant reduction in health care costs except slashing Medicare by some $½ trillion, which everybody knows doesn't work, and destroying the Medicare Advantage Program of which in my home State 330,000 seniors are a part.

Mr. DURBIN. I say to the Senator two or three things. First, the CBO tells us this bill will make Medicare live 5 years more. This bill will breathe into Medicare extended life of 5 additional years. Second, I have heard a lot of negative comments about government-sponsored health care. I ask the Senator from Arizona, is he in favor of eliminating the Medicare Program, the veterans care program, the Medicaid Program, the CHIP program to provide health insurance for children, all basically government-administered programs? Does he believe there is something fundamentally wrong with those programs that they should be jettisoned and turned over to the private sector?

The second question, does the Senator from Arizona want to justify why Medicare Advantage, offered by private health insurance companies, costs 14 percent more than the government plan being offered, and we are literally subsidizing private health insurance companies to the tune of billions of dollars each year so they can make more profits at the expense of Medicare?

Mr. McCAIN. First, obviously I want to preserve those programs. But every one of those the Senator pointed out is going broke. They are wonderful programs. They are great things to have. But they are going broke. He knows it and I know it, and the Medicare trustees know it. To say that we don't want these programs because we want to fix them is obviously a mischaracterization of my position, our position. We want to preserve them, but we all know they are going broke. It means cost savings. It means malpractice reform. It means all the things I talked about. The Senator mentioned Medicare Advantage. That is called Medicare Part C. That is part of the Medicare system. There are arguments made that there are enormous savings over time because seniors who have this program, who have chosen it, who haven't violated any law, are more well and more fit and have better health over time, thereby, in the long run, causing significant savings in the health care system which is what this is supposed to be all about. I ask in response: How in the world do you take a Medicare system which, according to the trustees, is going broke and then expand it to people between age 55 and 64? The math doesn't work. It doesn't work under the present system which is going broke. To add on to it, any medical expert will tell you, results in adverse selection and therefore increases in health care costs.

Mr. DURBIN. If I may respond, why is Medicare facing insolvency? Why is it going broke? Why are the other systems facing it? Because the increase in cost in health care each year outstrips inflation. There is no way to keep up with it unless we start bending the cost curve. We face that reality unless we deal with the fundamentals of how to have more efficient, quality health care. Going broke is a phenomena not reflective in bad administration of the program but in the reality of health care economics.

What I am about to say about the expanded Medicare is based solely on press accounts, not that I know what was submitted to CBO in detail. I do not. But the 55 to 64 eligibility for Medicare will be in a separate pool sustained by premiums paid by those going in. If they are a high-risk pool by nature, they will see higher premiums. What happens in that pool will not have an impact on Medicare, as I understand it. It will be a separate pool of those receiving Medicare benefits that they will pay for in actual premiums. It won't be at the expense or to the benefit of the Medicare Program itself. What I have said is based on press accounts and not my personal knowledge of what was submitted to CBO.

Mr. McCAIN. The Senator has seen the CMS estimates this morning that this will mean dramatic increases in health care costs. You may be able to expand the access to it, but given the dramatic increase, one, it still affects the Medicare system and, two, there will obviously be increased costs, if you see the adverse selection such as we are talking about.

I see the staff is getting restless. I ask my friend, maybe we could do this again during the weekend and during the week. I appreciate it. I think people are helped by this kind of debate. I respect not only the passion but the knowledge the Senator from Illinois has about this issue.

Mr. DURBIN. I thank the Senator.

## CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

## TRANSPORTATION, HOUSING AND URBAN DEVELOPMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—CONFERENCE REPORT—Resumed

The PRESIDING OFFICER (Mr. BEGICH). The clerk will report.

The bill clerk read as follows:

Conference report to accompany H.R. 3288, making appropriations for the Departments

of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, one of the troubling aspects of this conference report is that the appropriators air dropped three very significant spending bills into the text during conference. In other words, three bills without any debate, discussion or amendment were air dropped into this pending legislation. The three bills are the Labor-HHS-Education, financial services and general government, and the State-Foreign Operations appropriations bills. Combined, these three bills spend over $237 billion and contain 2,019 earmarks. It is remarkable and unacceptable that the Senate is willing to approve expenditure of such huge sums without the opportunity to debate and amend their content.

I see the Senator from Hawaii, who will say: This is the way we have had to do business before. We have to do this because of the pressure of time, the fiscal year ended, et cetera, et cetera. Again, we get back to this old line that we heard for an entire year and even early this year about change, about how we were going to change things in Washington. We are going to change the way we do business.

President Obama said about the last omnibus bill passed last March, 3 months into the Obama administration:

The future demands that we operate in a different way than we have in the past. So let there be no doubt: this piece of legislation must mark an end to the old way of doing business and the beginning of a new era of responsibility and accountability that the American people have every right to expect and demand.

What are we doing today? The exact same thing that we were doing before.

Here is a quote from the White House Chief of Staff Rahm Emanuel about the last omnibus bill. This is the one we weren't going to do anymore.

Second, this is last year's business.

He was talking about the one we passed in March.

And third, most importantly, we are going to have to make some other changes going forward to reduce and bring more—reduce the ultimate number and bring the transparency. And that's the policy that he enunciated in his campaign.

Bob Schieffer:

But it sounds to me like what you're—what he's about to do, here, is say, well I don't like this but I'm going to go ahead and sign it—

Talking about the last omnibus bill—

but I'm going to warn you, don't ever do it again. Is that what's about to happen here?

Emanuel:

In not so many words, yes.

And then, of course, the Senate majority leader said about the last omnibus:

We have a lot of issues we need to get to after we fund the government, something we should have done last year but we could not because of the difficulty we had with working with President Bush.

I wonder if we are going to blame President Bush for this one. If it rained, if it didn't rain? We blamed him for almost everything. Whatever it is, let's blame President Bush. The point is, what this bill is, and another one that will be coming up in a couple days, is exactly the same business as usual, a porkbarrel-laden bill with increases in spending when the American people are hurting in the worst possible way. The American people are hurting and the Labor, Health and Human Services and Education appropriations bill has $11.3 billion or a 7-percent increase in spending over last year's spending level. Where are we? This is America. Americans are hurting. There is 10 percent unemployment. People can't stay in their homes. They can't keep their jobs. We are passing a piece of legislation with 1,749 earmarks just in the Labor, Health and Human Services piece of over $806 billion.

Do you want to hear a few of them? They are fascinating. Here is my favorite of all—there are a lot of good ones—$2.7 million to support surgical operations in outer space at the University of Nebraska. I assure my colleagues, I am not making that up. That is an appropriation in this bill. Let me repeat: $2.7 million to support surgical operations in outer space. There are a lot of compelling issues before the American people. Surgical operations in outer space at the University of Nebraska? I guess the University of Nebraska has some kind of expertise that they need $2.7 million so we could support surgical operations in outer space. I wonder when the next surgical operation is scheduled in outer space? Maybe we ought to go into that.

I will be spending more time on the floor on this. But $30,000 for a Woodstock film festival youth initiative? Woodstock was a pretty neat experience, but do we need to spend $30,000 to revisit that one? There is $200,000 to renovate and construct the Laredo Little Theater in Texas. The next time you are in Laredo, be sure to stop by the theater and see $200,000 of your money which is going to renovate and construct this little theater. There is $500,000 for the Botanical Research Institute of Texas in Fort Worth; $200,000 for a visitors center in Bastrop, TX, a visitor center there in Bastrop with a population of 5,340 people. We are going to spend $200,000 of my taxpayers' dollars to build them a visitor center. There is $200,000 for design and construction of the Garapan public market in the Northern Mariana islands; $500,000 for development of a community center in Custer County, ID, population 4,342. If my math is right, that is about $100 per person. Right here in our Nation's Capital, $200,000 to the Washington National Opera for set design, installation and performing arts at libraries and schools. They have an operating budget of $32 million. Their Web site says the secret of its success is due to its position without the crucial government support typical in most world capitals. Then, of course, we always get back to Hawaii: $13 million on fisheries in Hawaii, nine projects throughout the islands ranging from funding the bigeye tuna quotas, marine education and training, and coral research.

The list goes on and on. The next time you are in New York, go to Lincoln Center. We are spending $800,000 of your money for jazz at the Lincoln Center. Jazz lovers, rejoice. For those who are not jazz lovers, we have $300,000 for music programs at Carnegie Hall; $3.4 million for a rural bus program in Hawaii. Apparently, the $1.9 million in the 2009 omnibus was not enough. In other words, we gave $1.9 million for this rural bus program in Hawaii so we have to now give them $3.4 million more.

Custer County, ID, with a population of 4,342, as of the year 2000—I am sure they have grown since—$500,000 for development of a community center in Custer County, ID.

The list goes on.

Then, of course, it is loaded with controversial policy riders that should have been debated in the Senate.

In the Department of Labor bill, the conference rescinds $50 million from unobligated immigration enforcement funds under section 286(v) of the Immigration and Nationality Act. This will result in a decrease in the enforcement of immigration law. I guarantee you, if that provision had been debated here on the floor of the Senate, that $50 million would never have been removed.

The conference agreement includes new language providing authority to the International Labor Affairs Bureau, the agency charged with carrying out the Department of Labor's international responsibilities. This may be a worthy program, but it should be addressed in legislation.

There are so many other policy provisions in this bill which have not been authorized, which is supposed to be done by authorizers.

The conference agreement provides $35 million for the Delta Health Initiative. The Delta Health Initiative provides a service to individuals in only one area of the country, the delta region of Mississippi. I have visited the delta region in Mississippi, and there are severe health needs. But couldn't we authorize this program? Couldn't we authorize it? Couldn't we have the proper debate and discussion?

The list goes on and on.

Of course, there is $25 million ''for patient safety and medical liability reform demonstrations'' that was not included in the House or Senate. Medical liability reform demonstrations—there is a demonstration project already in being. It is called the State of Texas, where they have reduced medical malpractice costs dramatically, and the physicians and caregivers are flowing back into the State of Texas.

Mr. President, I will be talking more later this afternoon about all the pork and earmarking that is in this bill.

I have to tell you that the anger and the frustration out there is at an incredibly high level. Those of us who—I am sure most of us do—spend a lot of time at townhall meetings and hearing from our constituents know there is a level of anger out there, the likes of which I have not seen before. Here they are, hurting so badly because they cannot keep their homes and their jobs. My home State of Arizona is No. 2 in the country of homes where the mortgage payment is higher than the home value—48 percent of the homes in my State. So here we are with 10-percent unemployment, with deficits—this year of $1.4 trillion—and there are dramatic increases, a 7-percent increase in spending in one, a 14-percent increase in spending in the other, and they do not get it. They do not get it. They do not get it. Americans are having to tighten their belts.

My home State of Arizona is in a fiscal crisis. They are having to cut services to our citizens because we cannot print money in Arizona. They only print money here. And here we are with Omnibus appropriations bills with as high as a 14-percent increase in spending, loaded down with billions of dollars worth of porkbarrel projects.

I predict to my colleagues that the anger out there will be manifest in a number of peaceful ways, including in the ballot booth. They are sick and tired of this. I saw a poll yesterday where the approval rating of Members of Congress has fallen below that of the approval rating for used car salespersons. I think it was at 4 percent, as I recall the poll. I have not met any of the 4 percent. I have not met anybody who approves of what we are doing.

This exercise we are in right here, on December 11, 2009, with a pork-laden Omnibus appropriations bill which frivolously and outrageously spends their dollars when they are struggling to keep their heads above water is something that is going to be rejected sooner or later by the American people. I have warned my colleagues that the American people are sick and tired of this. They did not like it before. Now they are fed up with it.

We will be hearing more this afternoon.

So, Mr. President, I rise today to raise a point of order under rule XXVIII against H.R. 3288, the Omnibus appropriations bill. I do this to ensure that this bloated legislation is not permitted to proceed to full consideration by the Senate.

Specifically, rule XXVIII precludes conference reports from including policy provisions that were not related to either the House or the Senate version of the legislation as sent to conference. Several provisions included in division D—the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act—of this omnibus bill are out of scope and were never considered on the floor of the Senate.

Mr. President, I raise a point of order that the conference report violates the provisions of rule XXVIII.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I move to waive all applicable sections of rule XXVIII, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. MCCAIN. Mr. President, I yield the floor.

The PRESIDING OFFICER. Under rule XXVIII, there is up to 1 hour equally divided.

The Senator from Hawaii.

Mr. INOUYE. Mr. President, I yield myself 10 minutes.

Mr. President, I rise today with mixed emotions. When I assumed the chairmanship of the Appropriations Committee last January, I immediately reached out to the senior Republican member of the committee from Mississippi, Senator COCHRAN, to seek his support in achieving my central objective for the fiscal year: to return this appropriations process to the regular order. The vice chairman, Senator COCHRAN, agreed wholeheartedly, and together we committed to passing all 12 appropriations bills individually and to sending each of the completed bills to the President for his signature.

It might be of interest to my colleagues that of the 12 bills assigned to this committee, 11 were passed by the end of July, many months ago. One was held up at the request of the House but passed in mid-September. This is December. These bills have been passed. And it might be of further interest to the Senate that of the 12 bills, 9 were passed unanimously, bipartisan, 30 to 0. Three passed by one objection—29 to 1.

Completing action on our annual appropriations bills is our most fundamental responsibility. The Founding Fathers gave us the power of the purse, and for good reason. Our system of checks and balances, which has served us so well in the last 220 years, allows the executive branch to propose spending initiatives that make clear to us their intentions and desires. But the Constitution gives the Congress the ultimate decisionmaking authority, and it is our responsibility to fulfill this obligation.

Regular order allows each Senator the opportunity to debate and to amend each bill on an individual basis. Every Senator on both sides of the aisle recognizes that regular order is the preferred course of action.

The underlying Transportation, Housing and Urban Development bill will provide urgently needed funding so we can keep our transportation system safe and strong and provide much-needed assistance to our most vulnerable populations.

In addition, every one of the six bills we consider today was reported out by the full committee. As I pointed out, three of them were passed unanimously and the other three by a vote of 29 to 1. Every one of them has been written in a bipartisan fashion with considerable input on the part of the minority party.

The negotiations with our House counterparts have been spirited at times, but I can assure my colleagues that on the difficult issues, our subcommittee chairmen and ranking members have done an excellent job of defending Senate positions and of coming to fair and equitable compromises when such was necessary.

I would also note that on Tuesday evening, we held a full and open conference with the House at which every conferee, including 22 Members of the Senate, bipartisan Members, and 14 Members of the House, also bipartisan, was afforded the opportunity to offer amendments on any provision of the legislation. For the record, comity was demonstrated by the Senate conferees, and no amendments—no amendments—were offered on our side. At the conclusion of the conference, 16 conferees, including 4 Republican members, signed the conference report.

Finally, I can say this is a clean bill. There are no extraneous measures attached. For this reason, as I just mentioned, we have bipartisan support of the bill, and I am proud of that fact.

Some have criticized this bill as spending too much. I will point out that the amounts recommended in the bill are below the amounts requested by the President and equal to the amount approved by the Congress in the Budget Committee. It has been a long process. Furthermore, the only area where the committee exceeded the amount requested by the President is for military construction and for veterans.

Moreover, some have criticized the majority for resorting to an omnibus measure once again. Clearly, those who criticize are those responsible for this outcome. When the Senate needs 4 days to pass a noncontroversial conference agreement on the Energy and Water appropriations bill, we know the only reason can be that a few Members want to delay our progress. Why do they want to do that? So they can complain when the calendar has expired and we have no time left for the regular order.

As a reminder to all of us, the Military Construction bill was delayed for 6 days of debate on this floor. It was a bill that was voted out of the Appropriations Committee unanimously, bipartisan-wise, and then delayed. But after the delay of 6 days, this Senate passed it by a vote of 100 to 0. What was the opposition all about? What was the delay all about, when everyone here was in favor of it? There was not a single dissenting vote, so it is obvious there was not opposition to the bill. It was simply that a few Members wanted to delay the bill.

Mr. President, now is December 11, and it is nearly time to adjourn the

Senate for the year. We have not completed our work, and therefore we have consolidated six appropriations bills in one measure. My colleagues know precisely why we have reached this point, and it is not the fault of one member of the Appropriations Committee, nor the fault of the majority. It is the fault of a handful of Members who would rather see the responsibility for funding our Federal Government turned over to the bureaucrats and administration than have the Congress exercise its constitutional responsibility. I am a very patient person, but at times the rhetoric of this debate is too much to take.

With Senator COCHRAN, my vice chairman, as my partner, we have tried to move 12 individual bills only to be thwarted by a few Members—just a few Members. That is why we are here and where we are today with an omnibus bill.

As we look ahead to consideration of fiscal year 2011 appropriations bills, I hope all Members of the Senate will learn from the frustrations of this year. We can succeed in returning to regular order for appropriations. We only need a modicum of cooperation and a recognition that delay for the sake of delay serves no one's best interests, least of all the people of the United States.

I strongly support this clean, bipartisan bill. I urge my colleagues to support it as well.

I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. 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. ENZI. Mr. President, for several weeks I have been saying, where are the appropriations bills? Under Federal law, we are supposed to have those done by October 1—October 1. Let's see. This is December 10. We must be past that deadline.

Well, here come the bills. They are all packed into one. There won't be the debate we would get if we handled them one by one. It is fascinating to me that one of them is Health and Human Services. All year we have heard that health is what is breaking the people of this Nation, how important health care is; why we have to do health care reforms under strict deadlines—strict deadlines that have shifted a number of times and are irrelevant to getting a good bill. But health care is that important, and it is one-sixth of the Nation's economy. So why haven't we had the health care appropriations debate before October 1? Why did it get put off until now? I guess it is because all of the earmarks weren't ready yet or maybe it is because they thought this bill ought to pass and solve all of the problems.

I think the bill could have passed much faster. I think it could have solved a lot more problems. If it would have had the kind of bipartisanship Senator DURBIN keeps describing as having happened, we would already have the bill done. Much of what he keeps repeating—and the more times you repeat it doesn't make it more true—in every speech he gives, he makes the same comments about how long the HELP Committee worked on this bill and how many amendments from the Republican side were automatically accepted into the HELP bill. We always have to come out and correct that. Yes, there were a number of amendments. That bill was put together over a period of 2 weeks with a new committee chairman, without a single input from Republicans. It was brought to the committee for markup. We did have about 3 days to do amendments, and we did a lot of amendments. They did accept some of the amendments. Of course, we helped correct punctuation, we helped correct spelling, and we did have a few amendments that were accepted that actually made a difference.

After the vote, they didn't publish the bill for the public to look at—the amended version of the bill for the public to look at. I think that was so they could rip out the Republican amendments they had accepted. That has never been done in committees. When amendments are accepted, they are left in the bill, or at least the Senator who proposed the amendment gets to talk about why maybe it should or shouldn't be in there, or at least he is informed that they are going to rip it out. Not in this case. The bill is published, we are looking for some of these things and find they are gone. Then they wonder why there is opposition to the bill.

Then he talks about the hours we spent together working as the Group of 6. I appreciate him mentioning the hours, but hours don't make any difference if ideas aren't taken. The purpose of the hours is to be able to express ideas that can be included in a bill. Just getting to express them isn't enough. To make them bipartisan, they have to be included. Anybody who looks at the things we have on our Web sites would understand that we did have some good ideas, some things that would make a change in the way we do health care in America. Are those in this bill? No.

This is the Reid bill. This wasn't put together by the HELP Committee or the Finance Committee, although significant parts of both of those bills, which we didn't have input into, are a part of it. How was that designed? That was designed behind closed doors right over there, with no Republican input whatsoever. How does that make it bipartisan? How does that even give us a chance to make it bipartisan? Then they wonder why we have amendments.

Here is a fascinating thing on amendments: In the HELP Committee, the Democrats presented more amendments than the Republicans did. The Republicans did get two that we voted on and passed. The Democrats had over 30 that they presented to get passed. How come they even had to put in amendments? It was their bill. We are facing the same thing with the bill that is on the floor here. They are putting in more amendments than we are. Every time we put in an amendment they have a side-by-side on it to give them some cover to say, well, what they said wasn't that important. It wouldn't make a difference. Besides that, we don't want to do it, so we will have something that says we voted for that concept.

If you put the bill together, you shouldn't be the ones filibustering and doing the amendments. They have a unique position here now. We have a Democratic amendment and a Democratic side-by-side. I don't remember ever seeing that before. But we had a request this morning for three Democratic votes and one Republican vote. That is real bipartisanship? Yet they want the cooperation.

The thing that upsets me the most is they keep saying this will save money, this bill is going to save the country money, and we are in this appropriations process and we ought to be interested in saving the country money. But CBO didn't say that. CBO did not say that this bill will save money, unless you use a whole bunch of phony accounting, and there is phony accounting in this bill. That is how they are able to say, Oh, yes, we save money. We save money. This is going to save the American people a lot of money. No, it does not. Do not buy that story. Look at the accounting. I am the accountant. I have taken a look at it, but I am not that good of an authority.

We just got the report from the CMS chief actuary. Yes, that is the actuary who is actually in charge of Medicare and Medicaid and he did an analysis on it. I am going to go into some more detail on that analysis, because he says this bill does not save money. This bill will cost seven-tenths of 1 percent more than if we did nothing. Is that health care reform?

And where is the transparency we were promised would happen under this administration? Transparency? They built the bill behind the closed doors over on that side of the Senate Chamber and now a significant part of the bill—which is called the public option, government option, government-run program, whatever you want to call it—has been drastically changed. The newspapers have written about it. People have seen it. But the newspapers haven't seen what is in there. The Democrats, according to Senator DURBIN, the majority whip, have not seen that bill. The only one who has seen it is Senator REID and the Congressional Budget Office. He is not going to disclose any of that—any of that—until after he sees what the score is going to be. That is the ultimate in transparency, in my opinion. If you think

you have a good idea, maybe you ought to let people see what the score is and see what the bill is, and you ought to if you expect us to debate it in a hurry. That is what we are under, this hurry-up situation. Hurry up so a bill that isn't going to do anything until 2014 can be passed by Christmas.

This side is ready to reform health care. This side is ready to stay in through the weekend. We already stayed in through last weekend. We will stay in until Christmas. We will stay in the days after Christmas. We will stay in next year. But it has to be right. The American public expects this to be right.

There has never been a major piece of legislation passed by this body in the history of the United States that was passed by one party. Not yet, there hasn't been. There is a good reason for that. It is full of flaws if just one side's ideas are incorporated in the bill, and this is no exception. This has a lot of flaws. This is a real move to the left to incorporate most of the people over there, but they weren't able to incorporate all of them, so now they are doing a secret public option to expand Medicare to distract people without telling them what is in it and expecting us in a few days to vote on this thing.

Well, I am going to share some of these numbers from the CMS chief actuary a little later, but I see my colleague is here and is actually going to talk mostly on the appropriations bill. I will say that what I have had to say ties in directly to appropriations. It is spending money. We are going to spend $464 billion of Medicare money from a system that is going broke and we are going to raise taxes—that is kind of an appropriation too—to cover the other $½ trillion in new programs that are not going to lower premiums or save the United States money, according to the CMS Chief Actuary Rick Foster.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I wish to thank Senator ENZI for not just what he said today but for what he has been doing throughout this whole debate to make very complex issues much simpler so that people can listen in to what is being said here and understand what we are doing. It has been a frustrating process here dealing with this attempted government takeover of health care. While the majority has us here on the floor debating one bill, they are behind a closed door over here creating a whole new bill and making periodic announcements about what might be in it. It is kind of like a magician who gets you looking at one hand while the sleight of hand is actually doing the magic with the other hand, and that is what we see happening here today. The majority wants to force this major piece of legislation through before Christmas while people aren't paying attention.

In the middle of this, they have decided to take a break to expand spending at unprecedented levels. I am here right now to support Senator MCCAIN's rule XXVIII point of order that points out that the majority, the Democratic majority, has violated all of these so-called ethics and transparency improvements that they were bragging about only a year ago. We are not supposed to take bills and in the secret of conferences add things that weren't in the House or the Senate version. That violates a specific rule, an ethics rule that the majority trumpeted not too long ago. This bill contains out-of-control spending. It completely reverses Congress's traditional position on many values issues such as taxpayer-funded abortions and needle exchanges in the District of Columbia. It ends the DC Opportunity Scholarship Program that has done so much to help a small number of disadvantaged minority students. It increases funding for Planned Parenthood, the Nation's leading provider of abortions, and it legalizes medical marijuana. Yet the overall funding levels of this bill are unconscionable at a time when we are in recession and so many people are out of work. We have massive debt that threatens our Nation's economic future and our very currency itself.

The bill represents a $50 billion increase or 12.5 percent over last year's funding level. This is not mandated spending; this is discretionary spending. This is a time the President is saying we have to get a handle on our debt. Yet every bill the Democratic majority has pushed across this floor has major increases in spending. It is actually nearly a $90 billion increase over the year before.

Mr. President, what the President said he was against, which was earmarks, this bill has 5,224 earmarks, costing nearly $4 billion, in addition to the other spending. I cannot read all of those, but I think people across the country have learned what earmarks mean. Here are a few examples:

$500,000 for construction of a beach park promenade; six different bike paths totaling $2.11 million; $250,000 for a trail at Wolftrap Center for the Performing Arts; and $250,000 for the Entrepreneurial Center for Horticulture.

I could go on and on. It makes no sense to be doing this. I think maybe one of the most egregious parts of the bill, which I want to focus on for a few minutes, goes back to those values issues. It is one thing to make abortion legal; it is quite another thing to force Americans who consider abortion immoral, based on their beliefs, or religious beliefs—it is immoral to make them pay for it, to actually promote abortion.

That is what this bill does. Everywhere you turn, this administration is promoting anti-life initiatives and advancing policies that most Americans find morally objectionable—namely, taxpayer-funded abortions. We have seen that throughout this health care debate, and now in the very set of bills that funds our government, it is promoting and funding abortion.

This Nation has had a debate about whether we should even allow abortions to be legal. But we have been in general agreement as a nation, and even here in the Congress, for years that we should not force taxpayers to pay for abortions. That is a terrible use of the power of government.

The omnibus bill reported by the House-Senate conference allows taxpayer funds to be used to pay for elective abortion in the District of Columbia, because Congress controls DC's entire budget, including appropriating the city's local revenues. If this omnibus bill passes, Congress will be allowing U.S. taxpayer dollars to fund abortion on demand, when it was previously prohibited.

This is a major shift in policy. We must step back and see where our priorities are as a nation. The values of our country are at stake in this legislation. As we look at this, I hope no American is so naive as to think that if they pass this government takeover of health care, no matter what we put in the legislation, they will eventually fund elective abortions in this country. It shows everywhere they pass a piece of legislation that they are trying to promote abortion in this country.

A vote for the omnibus is a vote for taxpayer-funded abortion. A vote against Senator MCCAIN's point of order is a vote for taxpayer-funded abortion. It is simple and it is clear. Congress is responsible for the budget and the way the funds are spent. If we don't think the government should create an incentive for taking unborn lives, we should not allow it in the legislation before us today.

In addition to this troubling revelation, the bill contains many other egregious reversals of longstanding policy contradicting traditional American values. The underlying bill legalizes medical marijuana and uses Federal funds to establish a needle exchange program in Washington, DC. Both encourage the use of drugs.

This is another glimpse of what is going to happen with government-run health care. If this Congress is promoting the use of medical marijuana, needle exchange programs, abortion, in this funding bill, does anyone believe that that won't be a part of a government-run health care system? Of course not.

Additionally, this bill eliminates the successful DC Scholarship Opportunity Program, which aids low-income children by giving them scholarships to attend private schools in Washington, DC. This affects only about 1,500 children. I have had a chance to meet with some of them who were in schools that were not working. This small scholarship program allows disadvantaged, primarily minority, students in Washington, DC, to go to a private school of their choice. Remarkably, in just a few years, the students who moved from the government schools to the private schools were 2 years ahead of their peers. It is an example of something

that is working, helping disadvantaged students, and it is a good example of an administration that is more interested in paying off union interests—in this case the teachers union—than doing what is good for the children in our country. To eliminate this small, inexpensive program is absurd. But it reveals to you——

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

Mr. DEMINT. No, I won't. It reveals to you the true motives of the majority. If we look at this bill and this eventual health care bill—if we ever have time to see it before they try to pass it—we are beginning to see a real glimpse, a true picture of where this Democratic majority is going.

Finally, this bill increases funding for title X family planning services, of which Planned Parenthood is the largest recipient. Planned Parenthood is the Nation's largest provider of abortions. Increasingly, they are what we call directed abortions. When people come to Planned Parenthood and look for advice on family planning, they are more often than not encouraged and pushed toward abortion.

All around this bill, you see what is going on. It is a major change in policy—not to make abortion available but to make Americans pay for it and to promote it.

I, along with 34 of my colleagues in the Senate, signed and sent a letter to the majority leader regarding the troubling anti-life policies in this omnibus bill. Collectively, we vowed to speak out to protect the longstanding Federal funding limitations on abortion—a belief that has enjoyed broad bipartisan support for many years.

For this reason, as well as a number of other values issues that are irresponsibly addressed in this legislation, I support Senator MCCAIN to raise a point of order against the omnibus under rule XXVIII of the Standing Rules of the Senate. I urge my colleagues to do the same.

I remind my colleagues that a vote against the McCain point of order is a vote to force American taxpayers to promote and pay for abortions. It is plain and simple. I am sure there will be a lot of smoke and mirrors after my talk that will try to convince you that is not true. But it is in the legislation and it will happen. We need to stop it.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I hope the Senator from South Carolina won't leave. He would not yield for a question. I want to address his remarks, and some of them are not accurate. I don't want him to feel that I am saying this outside of his presence.

I ask the Senator from South Carolina, while he has a few minutes, if he could look in the bill and find the provision in the bill that kills the DC Opportunity Scholarship Program. Please present it to me now, because it is not there. It is not there.

The DC Opportunity Scholarship Program is a voucher program, created more than 5 years ago. It was authorized through the Appropriations Committee, not through formal authorization. As many as 1,700 students in DC ended up going to school and getting about $7,500 a year to help pay the tuition for their schools. The program has diminished in size—I will concede that—even though I tried in a debate and negotiations to change that. It is down to about 1,300 students. It is funded in this bill to the tune of $13.2 million.

So for the Senator from South Carolina to stand up and say, as he did, that this program is killed, how does he explain the $13.2 million in the bill?

Mr. DEMINT. If the Senator will yield, the President has said he is going to end this program.

Mr. DURBIN. Does this bill end it?

Mr. DEMINT. I will come to the floor to explain the technical aspects of why it is not.

Mr. DURBIN. I am anxious to hear it. Explain all the technical aspects you would like, but the fact is that $13.2 million goes to the DC Opportunity Scholarship Program. And the 1,300 students currently in the program will be protected and will receive the tuition—a grant of $7,500 per student—in the coming year. That is a fact. To stand there and say otherwise is wrong.

Mr. DEMINT. You grandfather it in—if the Senator will yield for a question, does this bill fund the continuation of the program beyond the 1,300 who are already in it?

Mr. DURBIN. No. It limits the program to 1,300.

Mr. DEMINT. It kills the program then.

Mr. DURBIN. No. If they are why——

Mr. DEMINT. But the program will not continue.

Mr. DURBIN. Reclaiming my time. What happens is this program next year will be up going through the Senate and the House of Representatives. For the Senator from South Carolina to misrepresent the contents of the bill is not fair.

Secondly, this idea of government funding abortion, let me say to the Senator from South Carolina, here are the basic pillars on this controversial issue in America. First, the Supreme Court has said abortion is a legal procedure in Roe v. Wade.

Second, Congress said, through the Hyde amendment, that we will spend no Federal funds for abortion except in cases involving the life of the mother, rape, and incest.

Third, Congress said any provider—hospital, doctor, medical professional—who in good conscience cannot participate in an abortion procedure will never be compelled to do so.

This bill doesn't change that at all. In the Senator's State of South Carolina and in my State of Illinois, the leadership of the States—the Governor and the legislature—decide what they will spend their State funds on. That is done in States across the United States. Seventeen States have decided they will have State funds pay for abortions beyond the Hyde amendment. It is their State's decision, not our decision in DC. We, in this bill, give them the same authority that the State of South Carolina has and the State of Illinois has. No Federal funds from the government, from Congress, can be spent on this exercise or use of funds for abortions beyond the Hyde amendment. But if they choose to use their own funds—just as South Carolina and Illinois make their choice—then they make that decision.

Many in Congress have a secret yearning to be mayors of the District of Columbia. They want to be on the city council—not just in the Senate. They want to make every finite decision for the 500,000 or 600,000 people who live here.

Mr. DEMINT. Will the Senator yield?

Mr. DURBIN. Not at this time. When I finish, I will. The people who live here in DC are taxpaying citizens. They pay their taxes and they vote for President. They send their young men and women off to war just like every State in the Union. I think they are entitled to some of the basic rights we enjoy in each of our own States.

I also want to say a word about the needle exchange program. I get nervous around needles. I don't like to run in to the doctor and say give me another shot. So taking an issue like this on is not a lot of fun to start with. Why are we talking about needle exchange programs in the District of Columbia? For one simple reason: The HIV/AIDS infection rate in the District of Columbia, Washington, DC, the Nation's Capital, is the highest in the Nation. We are living in a city with the highest incidence of needle-related HIV/AIDS and meningitis and other things that follow. A needle exchange program says to those who are addicted: Come to a place where they can at least put you in touch with someone who can counsel you and help move you off your addiction, and they will give you a clean needle instead of a dirty one. I hate it, and I wish we didn't need it. I don't like it. But in States across the Nation they make the decision that this is the humane and thoughtful thing to do to finally bring addicts in before they infect other people and spread this epidemic.

The doctors are the ones who tell us this works. States make the decisions on it. I think the District of Columbia, facing the highest incidence of infection from HIV/AIDS, should also make that same decision in terms of the money they spend. The provision that came over from the House of Representatives would have limited the distribution of this program to virtually a handful of places in DC. We said that DC can make the rules about where the safe places are for these needle exchange programs.

As I said, I hate to even consider the prospect, but I cannot blind myself to

the reality that we have this high incidence of infection in the District of Columbia, and the medical professionals tell us this is working. We are bringing addicts in. We are bringing them into a safer situation. We are counseling some of them beyond their addiction. We are saving lives.

Am I supposed to turn my back on that and say, I am sorry, it offends me to think of this concept? It offends me to think of people dying needlessly, and that is why we have this program.

Let me say a word about the DC Public Schools. I did not ask to take this DC appropriations bill on. This is not something I ran for in the House of Representatives or the Senate. But it is part of my responsibility. This is a great city with great problems, but there are some shining lights on the horizon, and one of them is Michelle Rhee, chancellor of the public school system in the District of Columbia.

Michelle is an amazing story of a young woman attending Cornell University. She decided, when she graduated, to sign up for one of the top employers of college graduates in America today, Teach for America. She went off and taught in Baltimore. She took a hopeless classroom situation and in 2 years turned it around. Kids from the neighborhood had test scores nobody dreamed of because of Michelle's skill. She worked in New York, bringing nontraditional teachers into the teaching situation and then was asked to be chancellor here.

She is working on an overall reform for the DC Public Schools, which I endorse. It is a reform which will move us toward pay for performance, where those teachers who do a good job and improve test scores are rewarded. It is a voluntary program for teachers. The results are starting to show. This week in the District of Columbia, they reported math scores that showed dramatic improvements compared to cities around the Nation.

She has another responsibility: while 45,000 kids are in the public schools of DC, 28,000 are enrolled in public, but independent, charter schools. The charter schools have to match the performance of the public schools or improve upon them. It is the same for the voucher schools, the DC opportunity scholarships.

The Senator from South Carolina stands before us to say I eliminate the program. Where does that $13.2 million go? It goes to the program, the DC opportunity scholarships. I did change the program. I changed the program because I failed initially when I offered amendments.

Here are some of the changes I made, and you be the judge as to whether these are unreasonable changes.

I said for the voucher schools—half of them are Catholic schools—I said for the voucher schools, every teacher in basic core subjects has to have a college degree. How about that for a radical idea, a teacher with a college degree? It is now required. It was not before.

Second, the buildings they teach in—these DC voucher schools have to pass the fire safety code. Is that a radical idea killing the program? If it means closing a school that is dangerous, sure, I would close that school in a second before I would send my child or grandchild there.

Third, we said, if you attend a DC voucher school, the students there have to take the same tests as the DC Public Schools so we can compare how you are doing. If you take a different test, you have different results. We are never going to have a true comparison.

I also added in here, at the suggestion of Senator LAMAR ALEXANDER of Tennessee, a former Secretary of Education, that each of the DC voucher schools either has to be accredited or seeking accreditation. I don't think that is radical. I don't think it closes a program.

The final thing I say is, the people who administer this program have to actually physically visit the school at least twice a year. We had a hearing where the administrator of the program was shown pictures of some of these DC voucher schools and, frankly, he said: We have not been there. Maybe once a year we get by. It has to be more than that. We have to make sure these schools are functioning and operating. We are sending millions of Federal dollars into them. We expect it at public schools, we expect it at charter schools. Should we not ask the same of the DC voucher schools?

I say this, at least those in the Archdiocese of Washington agreed to these things and have said: For our Catholic schools, we are ready to meet these standards and tests. My hat is off to them. It is a challenge, I am sure, but it is one I think they will meet. I want them to continue to do that.

I did try to expand this program in one aspect in the course of our negotiations, with Senator COLLINS' assistance, so siblings would be allowed to attend this program. I think it would be helpful. We were not successful. There are those opposed to this altogether.

I say the Senator from South Carolina has mischaracterized the DC voucher program. He has not fully explained that we have not changed the Hyde amendment, which prohibits Federal funds for abortion purposes, other than strict narrow categories. He went on to say something about the needle exchange program, which does not reflect the reality and the gravity of the health crisis facing the District of Columbia.

This is not a radical bill. This is a bill which I think is in the mainstream of America. It is a bill consistent with the same laws that apply in his State of South Carolina and my State of Illinois and most other States across the Nation.

I wish we were not in this paternalistic position in relation to the District of Columbia. I would rather this city had home rule, had its own Members of Congress, could make its own decisions. That is my goal. I would like to see that happen. In the meantime, I think we should treat the people who live here fairly, give them a chance to deal with their significant problems, acknowledge success, as we just reported in the public schools, and try to help them where we can.

This is, in fact, a great city and the capital of a great nation. I think the mayor does a good job.

I reserve the remainder of my time.

Mr. ENZI. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Wyoming has 8 minutes 26 seconds. The Democrats have 7 minutes 30 seconds.

Mr. ENZI. Mr. President, I rise to discuss a new report on Senator REID's health care reform bill. This kind of fits in with the appropriations that deal with Health and Human Services that is over 2 months past due.

Last night, we received a new analysis of the Reid bill we have been discussing about 11 days straight, performed by the Center for Medicare and Medicaid Services—that is CMS—which is under the Department of Health and Human Services. The chief actuary, Rick Foster—this is the guy in charge of all this. He is the chief actuary. This is not somebody outside the system. This is the guy who has to answer for all this. He serves as the independent technical adviser to the administration and Congress on estimating the true costs of health care reform. Some of the findings in this report directly contradict some of the claims we heard this week about the Reid bill.

For a week now, we have heard how the Reid bill will help slow spending growth and reduce how much we as a nation spend on health care. Mr. Foster's analysis shows that statement is false.

According to this report, national health expenditures will actually increase by seven-tenths of 1 percent over the next 10 years. That is seven-tenths of 1 percent if we did nothing different. Despite promises that the bill would reduce health care spending growth, this report shows the Reid bill actually bends the health care cost curve upward.

We have also heard, over the past week, how this bill will reduce health insurance premiums. Again, the administration's own chief actuary says this is false. The new report describes how the fees for drugs, devices, and insurance plans in the Reid bill will increase health insurance premiums, increasing national health expenditures by approximately $11 billion per year.

We have also heard how the Reid bill will reduce the deficit, extend the solvency of the Medicare trust fund, and reduce beneficiary premiums. According to the Foster report, these claims are all conditioned on the continued application of the productivity payment cuts in the bill which the actuary found were unlikely to be sustainable

on a permanent annual basis. If these cuts cannot be sustained, one of two things will happen. Either this bill will dramatically increase the deficit or beneficiaries will not be able to continue to see their current doctors and other health care providers.

In reviewing the $464 billion in Medicare cuts in the Reid bill, the Foster report found these cuts would result in providers finding it difficult to remain profitable.

The report went on to note that absent legislative intervention, these providers might end their participation in the Medicare Program. In addition, if enacted, the report found that the cuts would result in roughly 20 percent of all Part A providers—that is hospitals, nursing homes, et cetera—becoming unprofitable within the next 10 years as a result of these cuts.

As a former small business owner myself, I understand the impact this will have on doctors, hospitals, and other health care providers. In rural areas, such as my State, these providers will go out of business or have to refuse to take any more Medicare patients.

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He said the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients. That is what we have been saying for about 11 days.

The Reid bill also forces 18 million people into the Medicaid Program. The Foster report concluded this will mean a significant portion of the increased demand for Medicaid services will be difficult to meet. These are not the claims made by insurance companies or anyone who might have a vested interest in the outcome of the debate. These come directly from the administration's own independent actuary.

In light of this report, why are the sponsors of this bill continuing to argue for a $2.5 trillion bill of new programs which will increase health care spending, drive up premiums, and threaten the health care of Medicare beneficiaries?

We can do better. We need to start over and develop a bipartisan bill that will address the real concerns of American people—develop a bipartisan bill. They cannot just exclude one side because there is a majority that won the election and gets to write the bills. We get tired of hearing that told to us. Where is your comparable bill? We are not trying to have a comparable bill, we are trying to have input into the current bill or the current bills: Sit down, talk about the principles, find the actual things that fit into those principles, develop the details, and have a bill that goes step by step so we get the confidence of the American people. The step we ought to start with is Medicare. That is why I present this report from the actuary of CMS, which is part of the Department of Health and Human Services, which is assigned most of the job of coming up with the details of the bill we have before us. That means actual elected officials would not be doing it. But this CMS actuary says everything that has been said by that side of the aisle is false unless there is some phony accounting that goes into it.

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

Mr. President, I suggest the absence of a quorum and ask unanimous consent that we divide the time.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. MURRAY. 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. LEAHY. 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. LEAHY. Mr. President, Division F of this omnibus conference agreement provides funding for the State Department, Foreign Operations, and related programs.

I want to thank the ranking member of the subcommittee, Senator GREGG, and his very capable staff, Paul Grove and Michele Wymer, for once again working with me and my staff in a bipartisan manner to produce this conference agreement.

I also want to thank Chairwoman NITA LOWEY and Ranking Member KAY GRANGER, and their staffs, for working so cooperatively with us throughout this process.

The fiscal year 2010 State Foreign Operations conference agreement provides $48.8 billion in discretionary funding, a $3.3 billion decrease from the President's budget request of $52 billion.

The bill is $1.2 billion below the fiscal year 2009 level, including supplemental funds. This is an important point that needs to be understood by all Senators, because yesterday a Senator on the other side of the aisle criticized this bill for being 31 percent above fiscal year 2009.

That is misleading, because it does not account for the billions of dollars in fiscal year 2009 ''emergency'' supplemental funding that was the standard way of doing business under the previous administration.

To ignore those costs to American taxpayers is disingenuous. President Obama has made clear that he intends to fund these programs on budget, not through supplemental gimmicks. That is what the Congress urged him to do, and now he is being criticized for doing so.

If you compare apples to apples, this bill provides $1.2 billion less spending than in fiscal year 2009.

Some Republican Senators have made speeches against this omnibus package on account of earmarks they don't like, even though some of them requested their own earmarks. In fact, earmarks comprise a tiny fraction of the total package.

Like past years, the State-Foreign Operations conference agreement does not contain any earmarks as defined by the Appropriations Committee.

We do fund many programs that are priorities of Democrats and Republicans, including assistance for countries like Afghanistan, Pakistan and Iraq, and longstanding allies like Israel, Egypt, and Jordan.

In addition, the conference agreement provides $5.7 billion to combat HIV/AIDS, including $750 million for the Global Fund. Funds are provided to combat other diseases, like malaria, tuberculosis, and neglected tropical diseases,

The agreement provides $1.2 billion for climate change and environment programs, including for clean energy programs and to protect forests.

The agreement provides $1.2 billion for agriculture and food security programs, with authority to provide additional funds.

There are provisions dealing with corruption and human rights, funding for international organizations like the United Nations, NATO and the International Atomic Energy Agency, and to promote democracy, economic development, and the rule of law from Central America to Central Asia.

The conference agreement provides the funds to support our embassies and diplomats around the world, public diplomacy and broadcasting programs, the Peace Corps, and many other programs that promote United States interests.

I don't support everything in this omnibus package any more than anyone else does. I had hoped, as I know did Chairman INOUYE and Vice Chairman COCHRAN, that we could have brought each of the bills in this omnibus, including the State-Foreign Operations bill, to the Senate floor individually.

But a handful of Senators on the other side have made clear that they will do whatever is procedurally possible to slow down or prevent consideration of these bills.

Despite that, I can say that the State Foreign Operations conference agreement was negotiated with the full participation of both House and Senate chairmen and ranking members. It was in every sense a collaborative process.

It is a balanced agreement and should be supported by every Senator who cares about U.S. security and the security of our allies and friends around the world.

The PRESIDING OFFICER. The question occurs on agreeing to the motion to waive all applicable sections of

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

The assistant legislative clerk called the roll.

Mr. KYL. The following Senators are necessarily absent: the Senator from Kentucky (Mr. BUNNING), the Senator from Oklahoma (Mr. COBURN), the Senator from Texas (Mrs. HUTCHISON), and the Senator from North Carolina (Mr. BURR).

Further, if present and voting, the Senator from Kentucky (Mr. BUNNING) would have voted ''Nay.''

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

The result was announced—yeas 60, nays 36, as follows:

[Rollcall Vote No. 372 Leg.]

YEAS—60

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

NAYS—36

| | | |
|---|---|---|
| Alexander | Feingold | McCaskill |
| Barrasso | Graham | McConnell |
| Bayh | Grassley | Murkowski |
| Bennett | Gregg | Risch |
| Brownback | Hatch | Roberts |
| Chambliss | Inhofe | Sessions |
| Corker | Isakson | Shelby |
| Cornyn | Johanns | Snowe |
| Crapo | Kyl | Thune |
| DeMint | LeMieux | Vitter |
| Ensign | Lugar | Voinovich |
| Enzi | McCain | Wicker |

NOT VOTING—4

| | |
|---|---|
| Bunning | Coburn |
| Burr | Hutchison |

The PRESIDING OFFICER. The yeas are 60, the nays are 36. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mrs. MURRAY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. I ask unanimous consent that no further points of order be in order during the pendency of H.R. 3288.

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

Mr. REID. It is my understanding that the next vote will be tomorrow morning at 9:30. We will be happy to come in at 8:30, but I ask unanimous consent if we could have that vote at 9:30. We will come in at 9, if that is OK with everybody.

Mr. MCCAIN. Will the majority leader yield for a question?

Mr. REID. I am happy to.

Mr. MCCAIN. And the disposition of the pending Dorgan amendment, could we have some idea about that?

Mr. REID. I think my friend from Arizona asks a very pertinent question. We offered a consent request last evening—and I did again today—that we would have the votes now before the Senate in sequential order. I offered a unanimous consent request to do that. We are happy to do that. I announced there would be no more votes today. On Monday when we come in, we will be happy to do that.

Mr. MCCONNELL. I say to my friend the majority leader, the problem with that is we have been going back and forth with an amendment on each side, and the agreement that you have proffered, if I understand it correctly, basically had two Democratic side-by-sides. Am I not correct in my understanding of that?

Mr. REID. Yes, but on all amendments that we have had up to this point, every side, Democrats or Republicans, has had the opportunity to do side-by-sides if they wanted to. In the weeks we have worked on this, what has transpired here, I am quite sure, has happened before. Simply stated, we have been requested by Republicans to have some votes, and we have agreed to have the votes. I explained in some detail last evening why we can't do it on a piecemeal basis. Procedurally, it puts us into a quagmire. Let's clear the deck. There will be other amendments after that we would certainly try to have each side offer.

But I agree with the Senator from Arizona, we should get rid of the drug reimportation amendment one way or the other, in addition to the motion offered by Senator CRAPO.

Mr. MCCONNELL. My point was, typically a side-by-side is offered one on each side. On the drug reimportation issue, you have basically two votes, both generated on the Democratic side, which created some confusion. But we will have to continue to talk about this and see if we can work our way through it.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I wanted to ask the minority leader—some of us are a little bit perplexed. I know the Senate has its rules, and we try to work through them. But we also at this time of year often try to accommodate families and schedules and so forth. I am curious as to whether the minority leader might not consent to allowing us or why it is that we couldn't, since Senators are here today, schedule the vote and agree to have the vote on the 60-vote margin today rather than tomorrow morning, requiring all staff and everybody in the Senate to come in on a Saturday.

Mr. REID. If I could make a comment before my friend the Republican leader comments, everyone should understand—this should make it easier for everybody—I am going to be home all weekend in Washington. I won't be traveling the country doing any fundraisers that people seem to be afraid of.

Mr. MCCONNELL. The answer to it is that our good friend the majority leader told us on November 30 we would be here the next two weekends. He said again this past Monday we would be here this weekend. I assumed and I know he certainly meant what he said. Our Members are here and ready to work. We wish to work on health care amendments. But as a result of the privileged status of the conference report that is before us, we have had that displaced. But I think everybody was on full notice as to what the work schedule was going to be for last weekend and this weekend.

Mr. KERRY. Mr. President, if I could respond, I don't mean to assert myself in any way that is inappropriate with respect to the leader, but we all know that in the workings of the Senate, what we are doing is both complicated and serious and critical to the country.

We are waiting for CBO to appropriately, consistently—as a member of the Finance Committee, we adhered to a very strict notion that we would try to find the precise modeling and cost of whatever it was we might do. It is entirely appropriate, to have a proper debate or discussion, that we know exactly what the cost is of any particular proposal. That is what we are waiting for. So the majority leader is appropriately trying to move another piece of legislation that is ripe, that is important to the country. This is just a question of courtesy to Senators and to their families and to the staff of the Senate who have been working extraordinarily hard. The question is simply, why, as a matter of convenience, we couldn't schedule a vote for today instead of being scheduled for tomorrow. We could do that by unanimous consent.

Mr. REID. If I could have the RECORD reflect, the Republican leader is right. I said we would be in session the next several weekends. But if you go back and look at the RECORD, how many times have I said we would be in session over the weekend and, interestingly enough, around here, magic things happen on Thursdays and Fridays. I have had every intention, as I have every time I have said it, that we should be in on a weekend, and usually we are able to work something out. We haven't been able to this time. I accept that. I am not complaining. But certainly the question of my friend from Massachusetts is a pertinent one. Senators are here now. Maybe we could have the vote early. But it is set statutorily. My unanimous consent request was, and I am not sure it was responded to, that we could have that vote at 9:30 tomorrow morning without having the mandatory 1-hour beforehand.

I heard no objection to that. We will just come in at 8:30. We will come in at 8:30 tomorrow morning and have a 9:30 vote.

Mr. KERRY. Mr. President, I ask unanimous consent that the vote

scheduled for tomorrow morning be held instead today at some convenient time within the next hours.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Mr. President, reserving the right to object—and I will object—we have been told by the majority that the single most important thing we could do would be to work on weekends and try to pass this health care bill which, according to the CNN poll that came out last night, the American people oppose 61 to 36, before Christmas. We are here. We are prepared to work. We would like to get back on the health care bill as rapidly as possible and vote on amendments to the bill. It either is or it isn't important enough for us to be here before Christmas. My Members are not expecting to take a break. We have been told by the majority all year long this is important. First we had to get it done before August. Then we had to get it done before Thanksgiving. Now we have to get it done before Christmas. We are here, ready to work.

I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from New Hampshire.

Mr. GREGG. Is the Senator from Arkansas seeking recognition?

Mrs. LINCOLN. Yes.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. GREGG. Mr. President, I still have the floor. I was just asking a question.

The PRESIDING OFFICER. The Senator from New Hampshire has the floor.

Mr. GREGG. Mr. President, I ask unanimous consent to be allowed to speak for up to 10 minutes and then that the Senator from Arkansas be recognized, and then we will come back to this side.

The PRESIDING OFFICER. Is there objection?

The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, reserving the right to object—and I have no intention of objecting—I would like to also propound a unanimous consent request that after the Senator from Arkansas has spoken and after the Senator from New Hampshire has spoken, Senator COLLINS, I, and Senator BAYH be recognized for up to 30 minutes for a colloquy.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Oregon?

The majority leader is recognized.

Mr. REID. Mr. President, reserving the right to object, I would ask my friend from Oregon if he would allow this modification to his unanimous consent request. It would be as follows: consent that Senator LINCOLN be recognized and that she be allowed to speak for up to 10 minutes; that Senator GREGG be recognized for up to 10 minutes; and then that Senators WYDEN, COLLINS, and BAYH be permitted to engage in a colloquy for up to 30 minutes; that following the conclusion of that 30 minutes, Senator ALEXANDER or his designee be recognized for up to 30 minutes to engage in a colloquy with other members of the Republican caucus.

The PRESIDING OFFICER. Is there objection?

The Senator from New Hampshire.

Mr. GREGG. Mr. President, reserving the right to object, I understand that is in addition to Senator WYDEN's request, which is that I should begin with my first 10 minutes, then we would go to the Senator from Arkansas, then we would go to Senator WYDEN, and then we would go to the outline as represented by the majority leader.

Mr. REID. If that is OK with the Senator from Arkansas.

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

The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, thank you very much.

Mr. President, I rise to speak a little bit about this health care bill. I know there has been a lot of discussion of it already today, but I think it is important—very important—that as this health care bill comes forward, we know what it says.

Unfortunately, we received this 2,074-page health care bill about 8 days ago, after it had been worked on for 8 weeks in camera, behind closed doors by the Democratic leadership. We have only had 8 days to look at it. We now hear there is going to be a massive revision of it—a massive revision—that is going to involve potentially expanding Medicare to people who are aged 55.

Medicare is already broke, by the way. It is broke. It has a $38 trillion unfunded liability. And we are going to add another 10 million people, maybe, into Medicare? That makes no sense at all.

But what I think is important is that what we know so far has been reviewed by a lot of different people, but some of them have not been all that objective. So there was a request made to CMS, which is an arm of the administration—therefore, one would presume it was not necessarily biased toward the Republican side of the aisle; in fact, maybe just the opposite; I do not think it is biased at all, hopefully; but if there was bias here, it certainly would not be Republican—to review the proposal of Senator REID.

Let me read to you what the CMS conclusion is—some of them—on the Reid bill.

According to the CMS Actuary: ''The Reid bill increases National Health Expenditures'' by $234 billion during the period 2010 to 2019. Why is this important? Well, it is pretty darn important because we had representations that the purpose of this health care reform was to decrease, to move down, health care costs. Now we find this bill, as scored by the CMS Actuary, significantly increases the national health care expenditures.

Secondly, they concluded that ''the Reid bill still leaves an estimated 24 million people . . . uninsured.'' Twenty-four million people—that is almost half of the uninsured today. Why is that important? We were told the purpose of this health reform exercise was to, one, insure everybody; two, bend the health care costs down; and three, make sure that if you have your own health care that you like, you do not lose it. Well, on two counts, it appears the Reid bill clearly fails that test and gets an F—on the issue of bending health care costs down and on the issue of insuring everyone, according to CMS, an independent group.

Third, it says:

> The new fees for drugs, devices, and insurance plans in the Reid bill will increase—

Increase—

> prices and health insurance premium costs for customers. This will increase national health [care] expenditures by approximately $11 billion per year.

So instead of bringing health premiums down, as was represented by the President—he said it was going to go down by $2,100 per family—your health care premiums are going to go up. What happens when health care premiums go up? People stop giving you health care insurance because they cannot afford it. Employers cannot afford it. So on the third issue, will you lose your health insurance if you like it, yes, you will. Yes, you will because the price of your health insurance is going to go up under the Reid bill.

There are a couple other points they make which are fairly important here:

> The actuary's analysis shows that claims that the Reid bill extends the solvency are shaky.

They are ''shaky''—the claims that it extends the Medicare trust fund solvency.

Quoting further:

> Moreover, claims that the Reid bill extends the Medicare HI Trust Fund and reduces beneficiary premiums are conditioned on the continued application of the productivity payment adjustments in the bill, which the actuary found were unlikely—

That is their concept, ''unlikely''—

> to be sustainable on a permanent annual basis. . . .

So the idea that this bill somehow assists Medicare—by the way, this bill cuts Medicare by $½ trillion, almost, in the first 10 years. When it is fully implemented, it cuts Medicare by $1 trillion in a 10-year timeframe, and over the next 20 years, it cuts Medicare by $3 trillion. The idea that this is going to somehow help Medicare is fraudulent on its face, according to the Actuary. ''Fraudulent on its face'' is my term. It is ''unlikely'' to accomplish that.

Then it goes into this issue of the CLASS Act, which we have heard so much puffery about how wonderful this CLASS Act is, which is basically another Ponzi scheme, as it was described by the chairman of the Budget Committee, not myself. The Actuary said:

> The Reid bill creates a new long term insurance program (CLASS Act) that the CMS actuaries found faces ''a very serious risk''—

This is their term, ''a very serious risk''—

of becoming unsustainable as a result of adverse selection by participants. . . .

In other words, only people who are probably going to need long-term care are going to opt into this program. So this plan will basically not be able to pay the costs of the benefits it is proposing because they will not have funds coming in to support the people who need it because there will be no larger insurance pool of healthy people who are using the program. Only the people who need the program will use it. So the CLASS Act representations we have heard around here have been debunked by this CMS report.

This is not our side saying these things. It is not our side saying that the cost of this bill will drive up the cost of national health care. It is not our side saying there are 24 million people left uninsured when this is fully implemented. It is not our side saying premiums will go up when this bill is fully implemented. It is not our side saying the CLASS Act will be a seriously unsustainable program. It is not our side saying Medicare will not be benefited by this program. In fact, it will be negatively impacted by this program. It is CMS saying that, an independent Actuary—not that independent; an arm of the administration. The administration's Actuary is saying it, not our side. So I think it is legitimate to have some serious concerns about this bill.

The CMS report goes on and says:

The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

Now, that is serious. That is serious.

It found that roughly 20 percent of all Part A providers—hospitals—would become unprofitable—20 percent of all Part A providers, such as hospitals, would become unprofitable within the next 10 years as a result of the proposals in the Reid bill.

Well, I know ''profits'' is a bad word on the other side of the aisle, but the simple fact is, if you do not have profit in a hospital, the odds are pretty good you are going to go out of business. You are going to go out of business because you cannot pay the costs of operating that hospital. Even nonprofits have some sort of cushion in order to make it through. Now we have the CMS Actuary telling us that 20 percent of the hospitals in this country are going to go into a negative cashflow and are going to become unprofitable as a result of what this bill proposes.

Well, colleagues, Senators, why would we vote for a bill which increases the cost of health care for the country and does not bend the health care cost down, which leaves half the people in this country who are uninsured still uninsured, which raises the premium costs for Americans, which puts the Medicare system at risk, which will put hundreds of providers at risk, hospitals, and which creates a brandnew entitlement which is not sustainable? And those conclusions are come to by the CMS, the independent CMS Actuary. Why would we want to put that type of program in place? Of course, we should not.

Listen, this 2,074 pages of bill—it was put together haphazardly. It was just sheets of paper stuck together. It ends up costing us $2.5 trillion overall. Every page costs us about $1 billion. Obviously, it was not well thought out because the CMS Actuary looked at it and said it is not well thought out. It does not accomplish its goals.

So rather than moving forward with the bill, why don't we just step back and start doing things we know are going to work? Why don't we start doing a few things around here we know are going to work?

I know the Senator from Oregon is on the floor, and he happens to be the sponsor of a bill which actually would make some progress in the area. Why don't we—I would be willing to step back and start from his bill because his bill at least makes sense. If it were scored by the CMS Actuary, it would not come out like this. They would not be saying that people would be uninsured, that the price of health care was going to go up and that Medicare was going to go into a disastrous strait and create an unsustainable entitlement.

So we have ideas around here that do work or are fairly close or at least have the foundation to work. Why don't we use those rather than this bill? That is my only point. This bill is ill thought out, and that is not my conclusion, that is the only conclusion you can come to when you look at the CMS Actuary's evaluation of it.

Mr. President, I appreciate the courtesy of the Presiding Officer, and I especially appreciate the courtesies of the Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, thank you. And I appreciate the courtesies of my colleague from Oregon for allowing me to speak now.

I rise today to talk a little bit about the health care concerns, particularly, in our small businesses. I first wish to compliment and thank my colleagues, particularly Senator LANDRIEU, who is chairman of the Small Business Committee, as well as Senator SNOWE, with whom I have worked for years on the plight of the small businesses in our States and across the country—their need to be able to really access the kinds of competition and choice that allow them to make good decisions and spend their health care dollars more wisely and being able to do what they all want to do in small business, and that is to be able to cover their employees, to make sure their employees and their employees' families are covered with reasonable and meaningful health insurance that actually covers what they need but is at an affordable price. So I thank those women, as well as Senator STABENOW, who I know has also been working on these issues.

But I really come to the floor today to highlight the challenges Arkansas small business owners face in providing quality, affordable health care for themselves, their families, and their employees under the current system and to look at what we can do to improve what their challenges are, what it is they face.

Small businesses are our No. 1 source of jobs in Arkansas, and they are truly the economic engines of our local economies, but they are also the economic engines of our national economy, not to mention learning laboratories for great ideas that will allow us in this great Nation to be truly competitive in the 21st century.

Arkansas's nearly 250,000 small business and self-employed individuals make significant contributions to our State's economy and generated $7.2 billion in 2008. Small employers account for 97 percent of the employers in our State, and I would daresay nationally it is somewhere at that same level.

Addressing the needs of small businesses is absolutely critical to any health insurance reform legislation we bring forward.

As I mentioned before, Senator SNOWE and I have worked together for many years to try to address these concerns, talking with small businesses and their advocacy groups to try to figure out what it is we can provide them, just as we provide ourselves as Federal employees the ability to access health insurance that has been negotiated, where people have come together, pooled the resources of all of our risks as Federal employees—all 8 million of us—to really get a better deal in the marketplace.

We want to be able to allow small businesses to do the same, to come together nationwide, pool themselves in their State exchanges, and be able to really take advantage of sharing their assets and their risks in the health insurance marketplace and get the best possible product they can.

Those small businesses that are able to afford health care coverage for their employees in today's world continue to experience skyrocketing costs, jeopardizing our States' and our Nation's competitive edge, both among themselves nationwide domestically but also internationally. We find that our small businesses are finding themselves more and more in the situation of having to be competitive globally to be able to do the business they do and to create the jobs they need to create.

Yesterday, I spoke with a radio station owner from Wynne, AR, in Cross County, who said high costs have threatened his ability to be able to provide coverage for his employees. Or, worse, skyrocketing costs are forcing business owners to consider giving up their businesses altogether, like the small business owner from Malvern, AR, who wrote me that he was giving up his 17-year-old business because he can no longer afford his rising health care insurance premiums. His wife and

his daughter each have a preexisting medical condition, and he feels pressured to find a new job that provides affordable employer-sponsored coverage for his family.

I heard from another small business owner in Mena who told me that at the age of 65, he continued to keep himself on his own small business's health insurance plan in order to ensure that he could maintain providing health insurance to his employees, many with whom he grew up. They were friends of his from grade school or church and community services and other places where he had built lifelong relationships, not only as an employer and an employee but as part of a community. Being able to maintain providing that to them was so critical to him that he was willing to ante up.

I have heard from small business owners from all across my State who desperately want to offer health care coverage for their employees, but it is simply not cost productive. The fact is, so many people think small businesses just want to opt out, that they don't want to provide health insurance, but they do. They do because it is important to them as a part of that community to do something for their employees who also happen to be their friends and neighbors. They also want to make sure their business is the best it can be, and in order to do that they have to compete for those skilled workers. Getting the best workers means providing good benefits, with health care being at the top of that list.

Another Arkansan asked me to please include the self-employed in my efforts to secure affordable health care. There are many small businesses with only one employee, and health care under this scenario is extremely expensive. They are put in an individual market where they are rated against themselves in many instances and not given the benefit of what we enjoy as Federal employees; that is, pooling ourselves together, adding our assets and our risks together so that we can mitigate that risk among all 8 million Federal employees.

These are just a few of the stories I have heard from Arkansans, and that is why in every Congress since 2004, I have introduced legislation to help small business owners afford health coverage for themselves, their employees, and their families. Several of my provisions are already included in the health insurance reform bill currently before the Senate, including the tax credit to help small businesses afford coverage, and we want to improve upon that. Also included are insurance exchanges through which consumers can compare insurance plans side by side so that they will be able to choose the option that is best for them, allowing their employees to see what is available to them and making sure that they are having access to all the options of the marketplace. There are reforms that force insurance companies to change the way they do business by limiting what an insurer can charge based on age and by banning the practices of denying coverage based on preexisting conditions or increasing rates when customers all of a sudden get sick.

We look at our small businesses and, yes, there are a lot of young entrepreneurs, but a lot of our small businesses are those individuals in that category above 55. These are people who, unfortunately, are starting to see chronic disease challenges in their life as they age. Unfortunately, they become an issue, or certainly their coverage becomes an issue when we talk about preexisting conditions. So it is critical that we make sure we change the way insurers do business as usual today and make sure they are playing fair with the small business entities out there.

Just one more of my efforts is something on which we worked with Senator SNOWE and Senator DURBIN, which is to allow that there would be national private insurers, as there are today, but allowing them to sell multistate plans nationwide, to be able to sell their plans in all 50 States. It would be with a strong Federal administrator who would be able to negotiate for quality and affordable coverage. Some of this has emerged as another potential part of the framework for national health insurance reform that can help us achieve our goals of more choices and more affordability for consumers, particularly those in the small business marketplace.

So I wish to thank the Presiding Officer for the opportunity to share with my colleagues and certainly those Americans out there who are the ingenuity and the engine of our economy. I know my colleague from Oregon has talked so much about choice and competition. It is so important, more important than ever in that small business marketplace and in that individual marketplace, as well as providing exchanges and the ability for national insurers, private insurers to be able to provide these types of products across all 50 States. Also, a multistate plan gives our small businesses and our self-employed, our individual marketplace, our independent contractors, such as our realtors and others, the ability to have access to greater choice, greater competition in that marketplace, and, therefore, a better product—greater, more meaningful coverage at a more reasonable cost, and that is what we want to see. More importantly, that is what our small businesses want to see.

So I thank the Presiding Officer, and I yield the floor to my colleague from Oregon and my colleague from Indiana, and the Senator from Maine as well, whom I know will have a great addition to this conversation. Thank you.

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

Mr. BAYH. Madam President, I wish to begin by complimenting my friend and colleague from Arkansas. We entered this body together, and she has consistently advocated on behalf of small businesses, not only across Arkansas but across the country. We both want to reform the health care system. We know this has a major impact on small businesses. They create most of the new jobs in our society. So if we care about job creation, we need to care about how health insurance costs affect businesses. They are going up too fast, and Senator LINCOLN has consistently advocated for doing what we can to get those cost increases down and, in fact, lower the burden on our small businesses. So this is not only a health issue, it is a jobs issue. She has been a real leader for many years.

So it is a privilege to work with the Senator on these important issues. Our class is doing well.

I also wish to say how much I am privileged to work with my friend from Oregon, Senator WYDEN, who has been one of the most innovative thinkers in the area of health reform. Once again, he is leading the way on an issue I am going to speak to for just a second.

I am happy to see my colleague from Maine is with us. It saddens me to say that, regrettably, this is one of the few examples of bipartisan cooperation where we have come together across the aisle, Democrats and Republicans, working together to figure out how in a practical way we can help solve the problem our country faces.

Here we have an issue of what to do about the 7 percent of Americans who are the individual insurance market but are receiving no subsidies from the government. According to the CBO, they are at risk of having their premiums go up. That is not right, particularly at a time when even people who are making more than $88,000 very often are struggling. So the question is, What can we do about it?

Senator COLLINS, Senator WYDEN, and myself focused on these individuals because we wanted to do what we could, in the words that my colleague from Oregon emphasizes so often, to provide choice and encourage competition to improve both price and quality. That is what our amendments are all about.

I wish to read a very brief statement and then turn it over to my colleagues.

When I go home to Indiana, the health care concern I hear the most about from ordinary Hoosiers, particularly middle-class Hoosiers, is what are we going to do to make their coverage more affordable. Many people in my State already have insurance, but they are struggling to keep up with the skyrocketing increases and the cost of that care.

We began our health care debate and these deliberations in this body this past spring. In mid-October, months into our debate, some of us were struck by the fact that we had not answered the most basic question: How much is this going to cost, and what do we do to bring those costs down? So I, along with some others, submitted in writing

that question to the Congressional Budget Office. What will this do for people in the small group markets such as small business owners, what will this do for individuals in the large group markets who work for larger employers, and what will it do for individuals who are out there struggling on their own to provide health insurance for themselves and for their loved ones?

When they released their report, I was pleased to see that the current legislation before us would either contain or lower costs for 93 percent of the American people. For 83 percent of those in small group and large group plans, it is about holding even or modestly lower. For the 17 percent in the individual marketplace, about 10 of that 17 percent get subsidies sufficient to actually bring their prices down, which leaves us with the 7 percent of those individuals in the individual market who get no subsidies and may see serious cost increases if nothing is done. The Wyden-Collins-Bayh amendments accomplish just that.

Our first amendment promotes more health choices for both employers and workers who would otherwise have few, if any, choices. It would help individuals who would be forced to buy their own insurance at higher rates than they currently pay. It would give them the option to purchase low-cost plans that offer essential, basic coverage. It would ensure that Congress does not mandate that anyone buy a more expensive plan than they currently have.

Our second amendment is a market-based reform that would pressure insurance companies economically to lower premiums and penalize them if they try to raise rates before the new exchanges are fully up and running. It would immediately adjust the insurer fee in the bill to give insurance companies a strong financial incentive to keep premiums down. It would do this by making it economically smart for companies to hold the line on overhead and executive salaries and to root out administrative inefficiencies.

Our third amendment would offer vouchers to give consumers who have health insurance but aren't satisfied with it access to more choices to meet their health care needs. It would offer vouchers that individuals could use to shop in the new insurance exchanges we are creating. Those who prefer their current plan to what is offered in the exchange could return the voucher and keep their existing coverage.

If we pass these amendments, we can credibly tell the American people that our long efforts will have addressed rising health insurance premium costs for everyone, and that is at the heart of this effort we have undertaken.

In closing, I will say that Americans are not looking for a Democratic solution or a Republican solution to our health care challenge. They are looking for us to come together to pass a reform bill that works in practical terms in their daily lives. More choices, premium cost increases under control, eliminating preexisting conditions—those are the things that will help middle-class families in my State and others across the country.

I am proud that the Wyden-Collins-Bayh affordability package will represent one of the few bipartisan efforts in this body. As I was saying, I regret the fact that it is one of the few, but I am proud we have come together to work to address this important challenge. I hope my colleagues will agree that we have a responsibility to restrain premium costs for all American families by encouraging consumer choice and robust competition in the private marketplace. I hope we will pass these amendments because they accomplish exactly that.

Madam President, thank you for your patience. I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I wish to begin my part of this colloquy with Senator BAYH and Senator COLLINS by thanking my colleague from Indiana. I also thank my colleague from Maine because both senators have said from the very beginning of this discussion that the bottom line for millions of working families, for single moms, for folks who are walking on an economic tightrope across the country, they are going to see this issue through the prism of what it means for them in terms of their premiums and their costs.

Over these many months, Senator BAYH and Senator COLLINS and I have been toiling to put together some bipartisan ideas. We have filed these ideas as a package of amendments, submitted them to the majority leader, Senator REID, and the chairman of the Finance Committee, Senator BAUCUS, and we just wanted to take a few minutes today to talk in particular about why it is so essential that there be a bipartisan effort put together for additional steps to contain costs.

Senator BAYH is absolutely right in describing the Congressional Budget Office analysis. Certainly, many people were fearful the CBO report would come out and say that on day one after enactment premiums would rise into the stratosphere as a result of the legislation. Fortunately, that was not the case in the report for most people.

We also believe there is a whole lot more that can be done. So we have said, Democrats and Republicans are going to try to prosecute that case. What it comes down to is ensuring that, in the text of this legislation, there is more choice and more competition.

The reality is, ever since the 1940s, the days of the wage and price control decisions that have done so much to shape today's health care system, most Americans have not had real choice in the health care marketplace and have not been able to enjoy the fruits of a competitive system. Most Americans have little or no choice. Most Americans don't get a chance to benefit when they shop wisely.

As Senator BAYH noted—and as Senator COLLINS and I have noted over the last few days—that is something we ought to change. It is certainly not a partisan idea. Senator REID and Senator BAUCUS, to their credit, have agreed with me that there ought to be more choice for those folks who have what, in effect, are hardship exemptions under this legislation. There are people, for example, who spend more than 8 percent of their income on health who aren't eligible for subsidies, who have these hardship exemptions; and Senator REID, Senator BAUCUS, and I have agreed they ought to be able to take any help they are getting from their employer in the form of a voucher and go into the marketplace. These people should be able to put into their pockets any savings that come about because they have shopped wisely.

But as Senator BAYH has noted, we have an opportunity to go further. If an employer in the exchange decides, on a voluntary basis, that their workers should have a choice, under the proposal advanced by the Senator from Indiana, the Senator from Maine, and myself, they would be able to do it.

It is the voluntary nature of our idea that Senator BAYH has outlined, an approach that gives more options to both employers and employees, that caused our proposal to win an endorsement from the National Federation of Independent Business.

I ask unanimous consent at this time to have printed in the RECORD that letter from the National Federation of Independent Businesses.

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

NATIONAL FEDERATION
OF INDEPENDENT BUSINESS,
*December 10, 2009.*

Hon. RON WYDEN,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

Hon. SUSAN COLLINS,
*U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR SENATORS WYDEN AND COLLINS: On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business association, we are writing in support of the Wyden-Collins amendment (Optional Free Choice Voucher—amendment #3117), which provides vouchers as a new voluntary option for employers and employees to purchase health insurance.

For small business, the goal of healthcare reform is to lower costs, increase choices and provide real competition for private insurance. The Wyden-Collins amendment achieves what we know are clear bipartisan goals in healthcare reform—expanding access to coverage, increasing consumer choice and improving portability.

Free choice vouchers recognize that the employer-employee relationship in America has changed considerably since employer-sponsored insurance began in the 1940s. They give employees tax- advantaged resources to tailor healthcare choices and purchases to their own preferences and needs. Because the employees will be able to choose from more policies, they will be more invested in their healthcare decisions. They will be better

consumers because they will be more aware of costs, and this will help ''bend the cost curve.''

In today's diverse and highly mobile workforce, people change jobs every few years. Improving portability will reduce the ''job lock'' that currently stifles entrepreneurship. Since free choice vouchers would help make health insurance portable, employees will not be locked into jobs when better opportunities come along.

This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond ''take it or leave it.'' This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups and kill jobs.

While some may claim this amendment weakens employer-sponsored health insurance, NFIB disagrees. The current system works better for larger firms who can operate more efficiently and effectively, and this inequity must be addressed. Simply put, what works for Wall Street does not work for Main Street. The Wyden-Collins amendment works to address this by making coverage more affordable for many of the nation's job creators.

NFIB appreciates your commitment to healthcare reform and your continuous efforts to find solutions that work for small business.

Sincerely,

SUSAN ECKERLY,
*Senior Vice President,*
*Public Policy.*

Mr. WYDEN. Madam President, I will make one last comment and then we will be happy to have our colleague from Maine join us in this bipartisan colloquy.

As we go forward with this legislation, I hope we will do more to look at the exchanges, which are the new marketplace for American health care. We haven't had that kind of approach since decades ago when we had a discussion about a system that, for all practical purposes, tethered people to one choice that was a judgment by an employer and insurance company. I wish to make sure, in the days ahead, that as many people as possible can keep exactly what they have today. That is something the President feels strongly about. That is something every Member of the Senate feels strongly about. I also want employers and employees to be able to say they are going to have a broader range of choices than they do now.

I think that can be done in a way that does not destabilize employer-based coverage. In fact, I believe it will strengthen employer-based coverage. I think that is one of the reasons the National Federation of Independent Business has endorsed our proposal.

We have a lot of work to do. I think there is a lot of good faith among Senators on both sides to get this done. I have always felt that on issues such as this, when you are talking about one-sixth of the American economy, you ought to try to find as much common ground as you possibly can. The three of us have come together behind a new set of amendments that does find some bipartisan common ground, around principles the President has embraced—choice and competition.

At this point, I yield whatever time she desires to our friend from Maine, who is a wonderful partner in this, along with Senator BAYH. Americans are looking for commonsense ideas above all else. That is what we have sought to do in this proposal.

I yield to my friend from Maine.

The PRESIDING OFFICER. The Senator from Maine is recognized.

Ms. COLLINS. Madam President, first, let me thank my two colleagues for their hard work on these amendments. My colleague from Oregon, Senator WYDEN, has been working so hard on health care issues for such a long time. My colleague from Indiana, Senator BAYH, and I have worked together on other issues, and I am proud of the fact that the three of us have been able to come together, in a bipartisan way, to present to our colleagues three important amendments.

It is, as Senator BAYH has noted, so unfortunate that the debate on this bill has been so divisive and partisan. Senator WYDEN approached me about trying to find some common ground on issues that would unite us.

I should make clear the adoption of these amendments—important though they are and great steps forward though they are—do not solve all the problems I have with the legislation before us. But they do improve the underlying bill in important ways because they help to advance the goal of more affordable insurance choices for consumers. Providing more choices and more competition and greater affordability, after all, should be major goals of health care reform.

The bill before us falls short in meeting those objectives.

Let me discuss our amendments. In summary, our amendments would allow individuals, who are not receiving subsidies, to purchase lower cost plans if that coverage is more affordable for them and more appropriate for them.

We are also proposing health insurance vouchers that would provide more options for employers and employees alike. We are proposing incentives to insurers to keep their rates lower than they otherwise might be.

Let me further explain our three amendments. First, we would open the catastrophic plan—the so-called young invincibles plan—in the individual market to anyone, regardless of age, who is not eligible for a subsidy under the bill.

It is incredible to me that we are going to so constrain the insurance choices for an individual who is receiving no taxpayer subsidy at all. That does not make sense. We want to ensure not only that people can keep the insurance they have, if they like it, but also that they have more options available to them. Why should we say that an individual who is not receiving any help—no subsidy at all—can only purchase one of the four types of plans that are authorized by this bill?

Some would say, well, if you do that, you are going to have a problem where a person will perhaps have a health savings account or a supplemental catastrophic insurance plan and wait until they are ill to trade up to a far better plan. But there is a way to stop that from happening. We have drafted our amendment so that if an individual wished to upgrade his or her coverage, he or she would have to wait until the next plan year and then could only upgrade to what is known as the bronze plan—the next higher level of coverage. That would help greatly to avoid the problem of adverse selection and having a situation where an individual simply waits until he or she becomes ill before upgrading coverage.

We also wish to make sure consumers know exactly what they are buying and what kind of coverage they are getting. That is why we would require health plans to disclose fully the terms of the coverage to ensure that consumers fully understand the limitation.

Finally, this amendment makes clear that States have the ability to impose additional requirements or conditions for the catastrophic plans offered under this bill.

The bottom line is, health care reform should be about expanding access to affordable choices. The bill that is on the floor now would cause many Americans in the individual market to pay more for health care coverage than they do today. That isn't right. If their health care coverage is working well for them, if they are higher income and can bear the risk, if they have a health savings plan, if they are not getting a taxpayer subsidy, why should we dictate, to this degree, the level of coverage they can buy?

I believe this amendment is simple common sense. Let me explain what it would mean in my home State of Maine because I think it shows that one size does not fit all. In Maine, 87.5 percent of those purchasing coverage in the individual market have a policy with an actuarial value of less than 60 percent. The most popular individual market policy sold in Maine costs a 40-year-old about $185 a month. These individuals often pair this catastrophic coverage with a health savings account.

Under the bill we are debating, unless they are grandfathered and don't have any change—for example, they have not gotten married or divorced—then that 40-year-old would have to pay at least $420 a month—more than twice as much—for a policy that would meet the new minimum standard. Otherwise they would have to pay a $750 penalty.

There is an exception in the bill, but it is only for people who are under the age of 30. What we are saying is, let's broaden that, so that if you don't receive help from the government, if you don't receive a taxpayer subsidy, you, too, can buy that kind of catastrophic coverage plan.

A second amendment the three of us are offering would provide more choices to small businesses and to their employees. Giving employers and employees more choices should be among the chief goals of health care reform.

Our amendment would allow employers who choose to do so to offer vouchers to employees so they can purchase insurance on the exchange. This would allow them, for example, to use the employer voucher, plus tap into the subsidy available because of their income level, and put some of their own funds into purchasing the kind of coverage they want. As Senator WYDEN has explained, this program is completely optional. Employers could offer these vouchers or decide to continue with their employer plan.

Let me tell you one reason I think this strengthens the bill. We need more people buying insurance through the exchanges, because if more people are using the exchanges, it broadens the risk pool, and the rates will be better for everyone. In insurance, having more people over which to spread the risk drives costs and premiums down.

So it is not surprising to me that our Nation's largest small business group, the NFIB, has endorsed our amendment. Let me read one paragraph from the NFIB letter because it really sums it up. The NFIB says:

> This amendment addresses the shortcomings of the existing employer-based system for small businesses. In the current system, small employers often have few options beyond ''take it or leave it.'' This new and voluntary option will encourage employers to provide insurance coverage for employees. It is the exact opposite of employer mandates that harm struggling businesses, discourage startups, and kill jobs.

I think the NFIB has said it well. This will give more choices both to employers and to employees.

Finally, let me say a few words about our proposal to modify the formula for the allocation of the $6.7 billion annual tax on health insurance providers.

There are a lot of problems with that particular tax, not the least of which is the gap between when the tax is imposed and when the subsidies are finally available 4 years later. Another problem is that the tax applies to nonprofit insurers as well as for-profit insurers. I am working with Senator CARL LEVIN to try to address that problem.

Here is what we are saying. The way the tax is designed in the bill, there is little to keep insurers from jacking up premiums, which is exactly the opposite of what we want them to do. They are going to just pass this tax on. So what we propose is to give insurers an incentive to keep premiums as low as possible. Under our amendment, if you are an insurer that is holding down the cost of your premiums, you don't pay as large a share of the tax. That makes sense. That helps us be more fair to the efficient insurer that is working hard to keep premiums down.

Again, I am very pleased to join with my two colleagues in presenting to the Senate three amendments that will provide more choices, greater affordability, and more options. These should be the goals of health care reform, and these amendments help to advance those goals.

Mr. WYDEN. Madam President, how much time do we have?

The PRESIDING OFFICER. There is 3 minutes 50 seconds remaining.

Mr. WYDEN. Madam President, I thank my colleague from Maine for her great statement. She summed it up so well.

To close, I will turn to Senator BAYH, and if we have time, I will add a thought or two.

Mr. BAYH. Madam President, I will be brief. I compliment Senator COLLINS on an excellent presentation. She summarized it very succinctly and in a way that was compelling.

I hope our colleagues will take note that among the three of us, we have the east coast represented, the west coast represented, and the Midwest represented. So we span the country and this body. I hope that will cause our colleagues to take some note.

The Senator from Maine focused on the letter from the NFIB. This helps small businesses at a time when they are struggling to create jobs. I hope our colleagues will take note of this letter.

The Senator from Maine also pointed out, why should we control the health care choices of individuals who are receiving no subsidies. That ought to be up to them. We accomplish all of those things.

It is a pleasure doing business with Senator COLLINS. This is a practical approach to solving these problems. I hope our colleagues will take notice.

The last thing I will say is, I repeatedly have people come up to me and say: Boy, RON WYDEN has some great ideas. We need more of these ideas in this bill. And this is accomplishing that. Senator WYDEN has been a true leader for many years in this area. I am glad choice and competition is being introduced, and it is because of his good work.

Mr. WYDEN. Madam President, to close, briefly, I thank my colleagues. I don't want to make this a bouquet-tossing contest, but to have Senator BAYH and Senator COLLINS—they are as good of partners as it can possibly get.

At the end of the day, Americans are going to watch this bill, they are going to watch it next year during the open enrollment season when millions are signing up for their coverage, and they are going to be looking to see if we did everything possible to hold down their premiums. Holding down their premiums—there is a variety of ways to go about it, but there is no better tool than to bring the principles of the marketplace, the principles that are used in every other part of American life—choice and competition—for the challenge ahead.

With the help of Senator COLLINS and Senator BAYH, we are going to prosecute that case. We are going to do it in a bipartisan way.

I thank my colleagues. I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Madam President, I ask unanimous consent that Republican Senators be permitted to engage in a colloquy during our time.

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

Mr. ALEXANDER. Madam President, my grandfather was a Santa Fe railway engineer. He lived in Newton, KS. So far as I can tell, he was one of the most important men in the world. I was 5, 6, 7 years old when I would go out there. He drove one of these great big steam locomotives. If there were as many yellow flags and red flags along the track when he was driving that Santa Fe locomotive as there are with the health care locomotive that is going through the Senate today, I think my grandfather would have been guilty of gross negligence if he did not slow it down and see what those red flags and yellow flags meant.

There is a lot of talk about making history with this bill, but there are a lot of different ways to make history. One of the things I hope we will be very careful to do in the Senate is not to make a historic mistake with this health care legislation.

Now we have even one more red flag to consider. It came out last night from Chief Actuary Richard Foster of the Centers for Medicare and Medicaid Services. The Centers for Medicare and Medicaid Services is not a Republican organization nor a Democratic organization. It is in the Obama administration. But it is the agency in charge of the Federal Government's spending for health care, which, according to Mr. Samuelson, who wrote a column in Newsweek recently, was 10 percent in the year 1980 and 25 percent today of our government's total expenditures.

If we go back to the reason we started all this debate on health care, let's remember that the reason we started the debate was first to see if we can bring down the costs of health care because the red flags and the yellow flags are everywhere for small businesses, for individuals, for our government. We cannot continue to afford the increasing cost of health care in America. So our first goal here is to bring down the costs.

Yet, Mr. Foster, the Chief Actuary of the Centers for Medicare and Medicaid Services, in a lengthy report delivered last night on the health care bill—most of which we have seen but some of which we do not know about yet; it is still being written in the back room—says that it will increase costs. Instead of reducing costs, it will increase costs. It points out the obvious, which is that the taxes in the bill will raise the premiums for the 180 million of us pay who have employer-based insurance, and for those who have individual insurance. It talks about the millions of Americans who will be losing their employer insurance by the

combination of provisions in this bill, many of whom will end up in Medicaid, where 50 percent of doctors will not see a new patient. But maybe the most important finding is the most obvious finding, the one which we have been suggesting to our colleagues day-in and day-out. It is one we ought to pay attention to and one which almost every American can easily understand. And it is this—it has to do with Medicare, the government program on which 40 million seniors depend. This bill would cut $1 trillion—let's start this way. Medicare, the program we depend on, its trustees say it is going broke in 5 years. It is already spending more than it brings in, and it will be insolvent between 2015 and 2017. Those are the Medicare trustees telling us this.

What does this bill do to that?

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

Mr. ALEXANDER. If I may finish my point.

What does this bill do? It would cut $1 trillion from Medicare. I ask the Senator from Arizona, if the program is going broke and you cut $1 trillion out—and then it has been suggested over the last few days that we add several million more people into Medicare—what do you suppose the result would be?

Mr. MCCAIN. The answer is, obviously, that I don't know.

I would like to say to the Senator from Tennessee—and Dr. BARRASSO is here as well—a lot of Americans have heard of the Congressional Budget Office. I am not sure many have heard of the Centers for Medicare and Medicaid Services, which is part of the Department of Health and Human Services. Are they not the people whose entire focus is not on the entire budget, as CBO's is, but just on Medicare and Medicaid, so that they can make determinations as to the future and the impact of various pieces of legislation on specifically Medicare and Medicaid? Is that a correct assessment?

Mr. ALEXANDER. The Senator from Arizona is exactly right. I believe I have my figures right. I think Mr. Samuelson said in his column the other day that in 1980 the Federal Government was spending 10 percent of all our dollars on health care and today it is 25 percent. And this is the agency in charge of most of that massive Federal expenditure every year.

Mr. MCCAIN. I thank my friend. Because the findings as of December 10, 2009, which is entitled "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act of 2009,' as Proposed by the Senate Majority Leader on November 18, 2009," have some incredibly, almost shocking results, I say to my friend from Tennessee.

We know the bill before us does not bring costs under control. But as I understand this—and it is pretty, may I say, Talmudic in some ways to understand some of the language that is in this report, but is it not true that the Reid bill, according to this report—this is not the Republican policy committee but the Centers for Medicare and Medicaid Services—doesn't it say:

> The Reid bill creates a new long-term insurance program—

Called the CLASS Act—

> that the CMS actuaries found faces "a very serious risk" of becoming unsustainable as a result of adverse selection by participants. The actuary found that such programs face a significant risk of failure and expects that the program will result in "net Federal cost in the long term."

I would like to mention two other provisions to my friend from Tennessee and Dr. BARRASSO, who is very familiar not only with this center but with Medicare and Medicaid services.

> The Reid bill funds $930 billion in new Federal spending by relying on Medicare payment cuts which are unlikely to be sustainable on a permanent basis. As a result—

According to CMS—

> providers could "find it difficult to remain profitable and, absent legislative intervention, might end their participation in the Medicare program."
>
> The Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning that a significant portion of the increased demand for Medicaid services would be difficult to meet.

They go on to say:

> The CMS actuary noted that the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care. He also found that roughly 20 percent of all Part A providers (hospitals, nursing homes, etc.) would become unprofitable within the next 10 years as a result of these cuts.

Finally, he goes on to say:

> The CMS actuary found that further reductions in Medicare growth rates through the actions of the Independent Medicare Advisory Board—

Which is one of the most controversial parts of this legislation—

> which advocates have pointed to as a central lynchpin in reducing health care spending, "may be difficult to achieve in practice."

This is a remarkable study, I say to my friend from Tennessee.

Mr. ALEXANDER. I thank the Senator from Arizona for being so specific about this and making it clear that this is not a Republican Senator talking, this is a Republican Senator reading the report of the Federal Government's Chief Actuary for the Medicare and Medicaid Program. Senator BARRASSO, a physician for 25 years in Wyoming, brought to our attention some of these things earlier this week when he pointed out what this also says.

Isn't the point that if we keep cutting Medicare, there are not going to be any hospitals and any doctors around to take care of patients who need care?

Mr. MCCAIN. May I also ask, in addition to that question, has Dr. BARRASSO ever heard of the CMS being biased or slanted in one way or another? Isn't it one of the most respectable and admired objective observers of the health care situation as far as Medicare and Medicaid are concerned?

Mr. BARRASSO. My answer to that is they are objective. That is why we did not get this report—I have the same copy my colleague from Arizona has. This just came out, and the reason is because they wanted to take the time to study the bill which they got in the middle of November. So they needed the time to actually go through point by point what the implications were.

The Senator talked about the one segment where they talk about they "face a significant risk of failure." They actually go on to say: "This will eventually trigger an insurance death spiral." This is for people who depend upon Medicare for their health care.

There is an Associated Press story out today that says this provides a sober warning—a sober warning—today to Members of the Senate. This is a time when the Senate raised the debt limit in this country by over $1 trillion. As the old saying goes—I say to my friend who served in the Navy—they are spending money like drunken sailors, and yet they want to keep the bar open longer. They want to increase the debt at a time when our Nation cannot afford it, when we have 10 percent unemployment.

The folks who know Medicare the best and can look at this objectively and share with the American people what their beliefs are as to what the impact is going to be say that is going to be devastating for patients who rely on Medicare for their health care—our seniors—and devastating for small community hospitals. I see the former Governor, now Senator of Nebraska, is here, and he knows, as I do from Wyoming, the impact on our small community hospitals.

But as the Senator from Tennessee said, this is all being done in a back room. We are not privy to the newest changes, which I think are actually going to make matters worse. The New York Times today says Democrats' new ideas would be even more expensive. Questions exist about the affordability. What we are dealing with is a situation that is unsustainable, and that is why the newest poll out today by CNN—certainly not biased one way or the other—finds that 61 percent of Americans oppose this bill. It is the highest level of opposition to date because more and more people are seeing and learning the truth about what is being proposed in the bill before the Senate.

Mr. MCCAIN. This is the information on the bill as it is; correct—the original bill? This is without the expansion of Medicare taken into this study, which already, as the Senator quoted from the New York Times and other health care experts, is going to increase costs even more. As you expand Medicare, among other things, you run the risk of adverse selection, which means the people who are the sickest immediately enroll, which then increases the cost, and then who would be paying the increased Medicare payments? The young and the healthy. I

ask my friend from Wyoming, should we do that to the next generations of Americans?

Mr. BARRASSO. Well, we should not. We need to be fair. We need to deal with this in a realistic way. But the bill in front of us now is going to raise taxes $500 billion, it is going to cut Medicare by almost $500 billion for our seniors who depend upon it, and for people who have insurance they like, it is going to increase their premiums. They are going to end up paying more than if no bill was passed at all.

That is why, across the board, more people would rather have this Senate do nothing than to pass this bill we are looking at today. They understand the impact on this Nation and our future is devastating. This will cause us to lose jobs, with the taxes; it will cause us to lose care in small communities; and for our seniors who depend upon Medicare, they are going to throw more people into Medicaid, another program where half the folks now can't find a doctor who will see them.

All in all, there is nothing I see about this bill or any of the new changes and certainly nothing in this report that says to the American people: Hey, you might want to think about this. The American people have thought about it. This report tells the American people this is not what they want for health care in this Nation.

Mr. ALEXANDER. Madam President, I ask unanimous consent to have printed in the RECORD the summary of the report of the Centers for Medicare & Medicaid Services.

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

DEPARTMENT OF HEALTH & HUMAN SERVICES, CENTERS FOR MEDICARE & MEDICAID SERVICES, OFFICE OF THE ACTUARY,

*Baltimore, MD, December 10, 2009.*

From: Richard S. Foster, Chief Actuary.

Subject: Estimated Financial Effects of the ''Patient Protection and Affordable Care Act of 2009,'' as Proposed by the Senate Majority Leader on November 18, 2009.

The Office of the Actuary has prepared this memorandum in our longstanding capacity as an independent technical advisor to both the Administration and the Congress. The costs, savings, and coverage impacts shown herein represent our best estimates for the Patient Protection and Affordable Care Act. We offer this analysis in the hope that it will be of interest and value to policy makers as they develop and debate national health care reforms. The statements, estimates, and other information provided in this memorandum are those of the Office of the Actuary and do not represent an official position of the Department of Health & Human Services or the Administration.

This memorandum summarizes the Office of the Actuary's estimates of the financial and coverage effects through fiscal year 2019 of selected provisions of the proposed ''Patient Protection and Affordable Care Act of 2009'' (PPACA). The estimates are based on the bill as released by Senate Majority Leader Harry Reid on November 18 as an amendment in the nature of a substitute for H.R. 3590. Included are the estimated net Federal expenditures in support of expanded health insurance coverage, the associated numbers of people by insured status, the changes in Medicare and Medicaid expenditures and revenues, and the overall impact on total national health expenditures. Except where noted, we have not estimated the impact of the various tax and fee proposals or the impact on income and payroll taxes due to economic effects of the legislation. Similarly, the impact on Federal administrative expenses is excluded. A summary of the data, assumptions, and methodology underlying our estimates of national health reform proposals is available in the appendix to our October 21 memorandum on H.R. 3200.

SUMMARY

The table shown on page 2 presents financial impacts of the selected PPACA provisions on the Federal Budget in fiscal years 2010–2019. We have grouped the provisions of the bill into six major categories:

(i) Coverage proposals, which include both the mandated coverage for health insurance and the expansion of Medicaid eligibility to those with incomes at or under 133 percent of the Federal poverty level (FPL);

(ii) Medicare provisions;

(iii) Medicaid and Children's Health Insurance Program (CHIP) provisions other than the coverage expansion;

(iv) Proposals aimed in part at changing the trend in health spending growth;

(v) The Community Living Assistance Services and Supports (CLASS) proposal; and

(vi) Immediate health insurance reforms.

The estimated costs and savings shown in the table are based on the effective dates specified in the bill as released. Additionally, we assume that employers and individuals would take roughly 3 to 5 years to fully adapt to the insurance coverage provisions and that the enrollment of additional individuals under the Medicaid coverage expansion would be completed by the third year following enactment. Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10–year cost for the proposed legislation.

ESTIMATED FEDERAL COSTS (+) OR SAVINGS (−) UNDER SELECTED PROVISIONS OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2009

[In billions]

| Provisions | Fiscal year | | | | | | | | | | Total, 2010–19 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | |
| Total [1] | $16.1 | −$1.6 | −$18.6 | −$35.2 | $22.4 | $78.1 | $83.0 | $76.2 | $74.5 | $71.0 | $365.8 |
| Coverage [2] | | | | | 93.8 | 141.1 | 158.3 | 165.8 | 178.6 | 192.3 | 929.9 |
| Medicare | 11.5 | 1.3 | −13.4 | −24.3 | −60.5 | −52.0 | −66.0 | −80.9 | −95.8 | −113.3 | −493.4 |
| Medicaid/CHIP | −0.4 | −0.1 | −0.7 | −5.3 | −4.9 | −4.9 | −4.8 | −4.9 | −4.8 | −4.8 | −35.6 |
| Cost trends | | | | | −0.0 | −0.1 | −0.2 | −0.4 | −0.6 | −0.9 | −2.3 |
| CLASS program | | −2.8 | −4.5 | −5.6 | −5.9 | −6.0 | −4.3 | −3.4 | −2.8 | −2.4 | −37.8 |
| Immediate reforms | 5.0 | | | | | | | | | | 5.0 |

[1] Excludes Title IX revenue provisions except for 9015, certain provisions with limited impacts, and Federal administrative costs.

[2] Includes expansion of Medicaid eligibility.

[3] I Includes estimated non-Medicare Federal savings from provisions for comparative effectiveness research, prevention and wellness, fraud and abuse, and administrative simplification. Excludes impacts of other provisions that would affect cost growth rates, such as the productivity adjustments to Medicare payment rates, which are reflected in the Medicare line.

As indicated in the table above, the provisions in support of expanding health insurance coverage (including the Medicaid eligibility changes) are estimated to cost $930 billion through fiscal year 2019. The net savings from the Medicare, Medicaid, growth-trend, and CLASS proposals are estimated to total about $564 billion, leaving a net cost for this period of $366 billion before consideration of additional Federal administrative expenses and the increase in Federal revenues that would result from the excise tax on high-cost employer-sponsored health insurance coverage and other revenue provisions. (The additional Hospital Insurance payroll tax income under section 9015 of the PPACA is included in the estimated Medicare savings shown here.) The Congressional Budget Office and Joint Committee on Taxation have estimated that the total net amount of Medicare savings and additional tax and other revenues would somewhat more than offset the cost of the national coverage provisions, resulting in an overall reduction in the Federal deficit through 2019.

The chart shown on the following page summarizes the estimated impacts of the PPACA on insurance coverage. The mandated coverage provisions, which include new responsibilities for both individuals and employers, and the creation of the Health Benefit Exchanges (hereafter referred to as the ''Exchanges''), would lead to shifts across coverage types and a substantial overall reduction in the number of uninsured, as many of these individuals become covered through their employers, Medicaid, or the Exchanges.

By calendar year 2019, the mandates, coupled with the Medicaid expansion, would reduce the number of uninsured from 57 million, as projected under current law, to an estimated 24 million under the PPACA. The additional 33 million people who would become insured by 2019 reflect the net effect of several shifts. First, an estimated 18 million would gain primary Medicaid coverage as a result of the expansion of eligibility to all legal resident adults under 133 percent of the FPL. (In addition, roughly 2 million people with employer-sponsored health insurance would enroll in Medicaid for supplemental coverage.) Another 20 million persons (most of whom are currently uninsured) would receive individual insurance coverage through the newly created Exchanges, with the majority of these qualifying for Federal premium and cost-sharing subsidies, and an estimated 20 percent choosing to participate in the public insurance plan option. Finally, we estimate that the number of individuals with employer-sponsored health insurance would decrease overall by about 5 million, reflecting both gains and losses in such coverage under the PPACA.

As described in more detail in a later section of this memorandum, we estimate that total national health expenditures under this bill would increase by an estimated total of $234 billion (0.7 percent) during calendar years 2010–2019, principally reflecting the net

impact of (i) greater utilization of health care services by individuals becoming newly covered (or having more complete coverage), (ii) lower prices paid to health providers for the subset of those individuals who become covered by Medicaid, and (iii) lower payments and payment updates for Medicare services, together with net Medicaid savings from provisions other than the coverage expansion. Although several provisions would help to reduce health care cost growth, their impact would be more than offset through 2019 by the higher health expenditures resulting from the coverage expansions.

The actual future impacts of the PPACA on health expenditures, insured status, individual decisions, and employer behavior are very uncertain. The legislation would result in numerous changes in the way that health care insurance is provided and paid for in the U.S., and the scope and magnitude of these changes are such that few precedents exist for use in estimation. Consequently, the estimates presented here are subject to a substantially greater degree of uncertainty than is usually the case with more routine health care proposals.

The balance of this memorandum discusses these financial and coverage estimates—and their limitations—in greater detail.

EFFECTS OF COVERAGE PROPOSALS ON FEDERAL EXPENDITURES AND HEALTH INSURANCE COVERAGE

*Federal expenditure impacts*

The estimated Federal costs of the coverage provisions in the PPACA are provided in table 1, attached, for fiscal years 2010 through 2019. We estimate that Federal expenditures would increase by a net total of $366 billion during this period—a combination of $930 billion in net costs associated with coverage provisions, $493 billion in net savings for the Medicare provisions, a net savings of $36 billion for the Medicaid/CHIP provisions (excluding the expansion of eligibility), $2 billion in savings from proposals intended to help reduce the rate of growth in health spending, $38 billion in net savings from the CLASS proposal, and $5 billion in costs for the immediate insurance reforms. These latter four impact categories are discussed in subsequent sections of this memorandum.

Of the estimated $930 billion net increase in Federal expenditures related to the coverage provisions of the PPACA, about two-fifths ($364 billion) can be attributed to expanding Medicaid coverage for all adults who make less than 133 percent of the FPL and all uninsured newborns. This cost reflects the fact that newly eligible persons would be covered with a 100-percent Federal Medical Assistance Percentage (FMAP) for the first 3 years and approximately 90 percent thereafter; that is, the Federal government would bear a significantly greater proportion of the cost of the newly eligible enrollees than is the case for current Medicaid beneficiaries.

Mr. ALEXANDER. I ask the Senator from Georgia, while this is a complex document, in many ways, isn't it a matter of common sense that if you take a program that is going broke and you take $1 trillion out of it and you add millions of people to it, isn't the end result going to be there is not going to be anyone left to take care of the patients who need help? Isn't that the logical result, just as this report says?

Mr. CHAMBLISS. Not only does that report say that, but as you say, common sense ought to tell you that. Unfortunately, it is pretty obvious the folks on the other side of the aisle who are promoting this bill don't get that message.

Let me quote the chairman of the Finance Committee, who today issued this statement relative to the CMS report the Senator has in his hand. He said:

> The report shows that health reform will ensure both the Federal Government and the American people spend less on health care than if this bill does not pass.

That statement is directly contrary to the statement in the CMS report that Senator ALEXANDER just referenced, which says:

> . . . we estimate that total national health expenditures under this bill would increase by an estimated total of $234 billion (0.7 percent) during calendar years 2010–2019.

Not only that, but the report says that national health expenditures would increase as a percentage of GDP from $1 of every $7, which is about 16 percent, to $1 out of every $5, which is 20 percent.

What the report concludes is not only are our health care costs going to go up, but as the Senator from Arizona said, 20 percent of all Part A providers—nursing homes, hospitals, home health—would become unprofitable within the next 10 years as a result of the provision in this bill relating to the Medicare cuts the Senator from Tennessee talked about.

The American people do get it. That is why these poll numbers the Senator from Wyoming just stated coming out of CNN and why the FOX poll I saw this morning said 57 percent of the people in America are opposed to this bill. The American people are getting it but, for some reason, our friends on the other side of the aisle are not.

Mr. ALEXANDER. I see the Senator from Nebraska is here, and we had a conversation earlier about the attitude of people in Nebraska. It is very helpful to have independent evaluators who tell us that if you cut $1 trillion out of a program that is going bankrupt and then add more people to it, doctors and hospitals are going to go broke. We have heard that before from the Mayo Clinic, and I think Senator JOHANNS has been hearing that in the State of Nebraska.

Mr. JOHANNS. I have heard it all over the State. Today, let me say, the fog cleared. The fog cleared and the Sun is shining brightly on this mammoth experiment with 16 percent of the economy. This actuary says, very clearly—and he has no ax to grind with anyone—that costs are going to go up under this bill; that care is going to be jeopardized under this bill; that the very linchpin, the essence of what this bill was supposed to be all about, can't happen.

If I might, I wish to refer to something which I will ask to be a part of the RECORD to gain some perspective.

I wish to applaud my colleagues on this side, and here is why. We wrote to the majority leader back in the first part of November and we said CBO had not been able to tell us what the ultimate impact would be on health care costs and we felt strongly we needed a second opinion. So we asked that this bill be submitted to scrutiny by CMS, and that is what we are getting today. Twenty-four of us signed onto that.

Madam President, I ask unanimous consent to have printed in the RECORD the letter to the majority leader, dated November 12, 2009.

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

U.S. SENATE,
*Washington, DC, November 12, 2009.*

Hon. HARRY REID,
*Majority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.*

DEAR MAJORITY LEADER REID: This health care bill will be the most significant piece of legislation that Congress considers this year because it would undoubtedly affect every American. Therefore, it is vitally important that we do not make decisions without a complete and thorough analysis of the bill.

One of the most important issues facing us as we review this legislation is its effect on overall health care spending. The President has repeatedly stated that he believes health reform should control health care costs. Achieving that objective, as you know, means more than simply employing draconian cuts in Medicare spending and creating numerous new taxes to minimize the effect of creating a vast new health care entitlement on the federal deficit. Bending the cost curve means curbing the rate of all health spending.

Unfortunately, the Congressional Budget Office has been unable to produce an estimate of the effect of the bills before us on overall medical spending though we note that the CMS Actuary has provided such an assessment of an earlier version of the House health reform bill (HR 3200). Such an analysis would be invaluable to the Senate as we consider this important legislation.

Therefore, we request that you submit the legislation to the Office of the Actuary at CMS for analysis and make the findings public before you bring the bill to the Senate floor for consideration. We agree with President Obama that health care legislation must "bend the cost curve so that we're not seeing huge health-care inflation over the long term." Therefore, we would specifically like the Office of the Actuary at CMS to determine if this legislation will bring down health care expenditures over the long term.

We look forward to your response and the assurance that this secondary analysis will be completed in order to provide us and the American people with the information necessary to make a well-informed vote.

Sincerely,

Mike Johanns; Sam Brownback; Pat Roberts; Robert F. Bennett; Tom Coburn; Richard Burr; Christopher S. Bond; Roger F. Wicker; John Barrasso; Michael B. Enzi; Jim Bunning; Mike Crapo; Orrin G. Hatch; Lamar Alexander; Susan M. Collins; John Thune; George S. LeMieux; Jim DeMint; Mitch McConnell; George V. Voinovich; John Cornyn; James E. Risch; Kay Bailey Hutchison; Lindsey Graham; Thad Cochran.

Mr. JOHANNS. Today, we finally have come to grips with the fact that all the promises made are not being fulfilled by this bill; that the $2.5 trillion that will be spent will accomplish nothing; that health care costs would not go down—they will, in fact, go up; and that people will lose their private insurance.

I tell you the most heartbreaking thing for me, and any other Senator who has rural hospitals, which is just about every Senator, is that 20 percent, as the Senator from Georgia points out, will be underwater. That means nursing homes that provide care for real people, and that means hospitals that provide services for real people. I tell you, in a State such as Nebraska, when hospital care disappears in a small town, that may mean hospital care disappears for hundreds of miles.

Mr. ALEXANDER. If I could ask the Senator from Nebraska this question. Did a rural hospital in Nebraska or Wyoming or some State not—did I notice in a letter from the Mayo Clinic this week, they said cuts such as this or an expansion of Medicare under these circumstances would cause them to—well, to drop Medicare, period; they lost $840 million this year, and they are beginning to say to some citizens from Nebraska, Montana, other areas: We can't take you if you are a Medicare patient or if you are a Medicaid patient.

Mr. JOHANNS. They are saying that, and that is what is happening because they are losing money. They are definitely losing money on Medicaid and they are losing money on Medicare.

So what the Reid bill does is it says: Mr. ALEXANDER, you sell whatever—cars. Let's use that as the analogy—and I know you are losing $100 on every car. But let's just give you twice as many to sell. Well, you are going to lose twice as much money. That is their solution to the health care crisis in this country.

But what this actuary points out, what the Mayo Clinic points out, and what so many analysts now have pointed out is that this bill is going to put hospitals under and it is going to put nursing homes under.

Here is another point that gets lost in this complex debate. That nursing home or that hospital may be the only major employer in that community. When you lose that, you not only lose your medical care, but you lose those jobs. I have said on the floor before that this bill is a job killer. It is a job killer. There is no way of getting around it. Those jobs will disappear in that small town, that rural area, and even in the big cities.

I hope our friends on the other side study this very carefully. This is a roundhouse blow to the Reid plan—to the Reid-Obama plan. This, in my judgment, proves, beyond a shadow of a doubt, that this is going to crush health care in our country.

Mr. ALEXANDER. I would ask the Senators from Wyoming and Georgia, who are here, to go back to the beginning. When we began this debate, the President, in his summit at the beginning of the year, very correctly—and I applauded him for that—all of us said we have to reduce health care costs—costs to us, costs to small businesses, and costs to our government. But doesn't this report of the chief actuary of the government say the Reid bill will actually increase health care costs?

Mr. BARRASSO. It does say that. The President has said he wanted to bend the cost curve down. This report says, if we do these things that are in the Reid bill, costs of care will actually go up faster than if we did nothing at all. That means for people who buy their own insurance, the cost of their premiums will go up faster than if this Senate passed nothing at all.

Mr. ALEXANDER. So if I am understanding it, we are going to cut $1 trillion, when fully implemented, out of Medicare; we are going to add $1 trillion in taxes, when fully implemented; we are going to run up the debt, we believe on this side; we are going to increase premiums and costs are still going up?

Mr. BARRASSO. For people all across the country, costs are still going to go up. The cost of doing business will go up. For families who buy their own insurance, the cost of their premiums will go up. For people who are on Medicare, they are going to see tremendous cuts into that program, and they depend on that for their health care. So costs are going up for people who pay for their own and for businesses that try to build jobs.

We know small business in this country is the engine that drives the economy, and according to the National Federation of Independent Businesses, 70 percent of all new jobs come from small businesses. They are going to be penalized to the point they are not going to be able to add those new jobs. The NFIB says we will lose across the country 1.6 million jobs over the next 4 years as the government keeps collecting the taxes but doesn't even give any of these health care services because those have all been delayed for 4 years.

Mr. ALEXANDER. We have about 6 minutes remaining in our time. I wonder if the Senator from Georgia, having heard the comments, has any additional recommendations on the chief actuary's report.

Mr. CHAMBLISS. I wish to ask a question or two of the Senator from Wyoming, who is a medical doctor and who, prior to coming to the Senate, was an active orthopedic surgeon.

I have had physicians come into my office by the droves and talk to me about Medicare before we ever got into this health care debate, and what I heard was in reference to the reimbursement rate under Medicare to physicians and to hospitals being so low.

In fact, the American Hospital Association has come out just in the last 24 hours and pointed out that hospitals across the Nation get a return of about 91 cents for every dollar of care provided. That is not 91 cents of the amount of charges from the hospital to Medicare, it is 91 cents of the cost of the care provided. So the return is about 10 percent less to a hospital than the cost that the hospital has in it.

My understanding is that at least 10 percent less than the cost provided for a physician is reimbursed to the physician under Medicare. As a result of that, the younger physicians, particularly, who are coming out of med school with these huge debts they have incurred as a result of the long years they are required to be in school, simply cannot afford to take Medicare patients and they are not taking Medicare patients. Is that in fact what is happening in the real world? And will that not get worse under this proposal?

Mr. BARRASSO. It is happening. It will get worse under the proposal that is ahead of us. That 90-percent figure is actually a high number. I know a number of physicians and hospitals, especially in rural communities, that get reimbursed less than that. The ambulance services do not even get reimbursed enough from Medicare—these are volunteer ambulance services—to fill the ambulance with the gas for taking somebody the long distances from where they may have fallen and hurt themselves, broken a hip, to get them all the way to the hospital. This is across the board bad for America.

We say we want patients to be able to get care. If you throw a whole bunch more people on to this boat that is already sinking, which is what the Democratic leader is now trying to do, it is going to make it that much harder for our hospitals to stay open, especially in these communities where there is only one hospital providing care—much more difficult. But with any young physician coming out with a lot of debt, trying to hire the nurse and pay the rent and the electricity and the liability insurance and all of that, these do not even cover the expenses. That means they have to charge more to the person who does have insurance, the cost shifting that occurs.

As a result, for people who have insurance, they are going to see their rates going up. For people who rely on Medicare, it is going to be harder to find a doctor. For those who are put onto Medicaid, with the aid for those who need additional help, which the Senate majority leader is trying to put more people into that area, it is going to be harder for them to find care.

Across the board, there is nothing good with this proposal. What we have seen today documented from the folks who are objective and look at the whole picture, they think it is actually as bad—they admit it is as bad as we have been saying it is. They say you guys have been right, what you are saying about the cost of care, the impact on health care. And their phraseology is such that I think they absolutely pinpoint all of the reasons that the American people, now by a number of 61 percent, oppose this bill we are taking a look at. That is why the Mayo Clinic has said, in the letter from their executive director of their Health Policy Center, ''Expanding this system to persons 55 to 64 years old will ultimately hurt patients by accelerating the financial ruin of hospitals and doctors across the country.'' That is what we are looking at.

Mr. ALEXANDER. Madam President, how much time remains?

The PRESIDING OFFICER. There remains 1½ minutes.

Mr. ALEXANDER. Madam President, if I could conclude our time, with the permission of the Senator from Georgia and Wyoming, instead of racing down this train track with yellow flags and red flags flying everywhere, people often ask us: What would you do? What we would do is what we think most Americans would do when faced with a big problem, not try to solve it all at once but to say, What is our goal? Our goal is reducing cost. What are the first four or five steps we can take to reduce costs? Can we an agree on those? We think we can. Let's start taking them. For example, small business health plans to allow small businesses to offer insurance to their employees at a lower rate. That legislation is prepared and before the Senate.

Reducing junk lawsuits against doctors. That reduces costs.

Allow competition across State lines for insurance policies. That reduces costs.

Going step by step to re-earn the trust of the American people to reduce health care costs is the way to go, instead of making what this new report from the Center for Medicare and Medicaid Services helps to show again would be a historic mistake.

I yield the floor.

Mr. ROBERTS. Will the Senator yield for an observation?

Mr. ALEXANDER. Certainly.

Mr. ROBERTS. I thank the Senator for yielding.

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

Mr. ROBERTS. Madam President, I will be very brief. I thank the Senator from Tennessee, not only for his statement but for his constant efforts. Facts are stubborn things. Yet he has pointed out basically what this report now confirms. During the last few months we have seen some commentary that says ''scare tactics,'' of all things. I happen to have the privilege of being the chairman of the Rural Health Care Caucus. I was in the House of Representatives when I had the privilege of serving there and I am a cochairman with Senator TOM HARKIN of Iowa. There are about 30 of us who, from time to time, will correspond and meet and send messages back and forth to try to keep the rural health care delivery system viable.

We have been worried for some time in regard to what is going to happen to Medicare, what is going to happen in regard to cost, what is going to happen in regard to rationing. Every hospital director, every hospital board in rural America has worried about these things—more especially about CMS, which has been described here in detail. That is the Centers for Medicare and Medicaid Services.

I have to tell you, if you are a hospital administrator or if you are on the board of a local hospital in a rural area, and you hear the word CMS, it is probably not viewed in the best of considerations, that CMS is in charge of enforcing what H2S comes down with. So in terms of reimbursement, in terms of all things—competitive bidding—and I am talking about doctors, hospitals, nursing homes, home health care, hospice, all of this—when they hear the word CMS a cold chill goes down the back of their neck, more or less like expecting Lizzy Borden to come in the front door.

So I am especially glad that the actuary, Mr. Richard Foster, the Chief Actuary from CMS, has shined the light of truth into darkness. He has taken the original bill we have been talking about for some time, as my colleague has pointed out, and said basically this bill is going to increase costs and is going to result in rationing. It does not take into consideration the latest iteration that we hear from the press and media about including people 55 to 65 into Medicare. It is going to be interesting, if we have enough time—although I know that the distinguished majority leader has asked for a CBO score—but I would sure like to know what Mr. FOSTER would think of that idea. I think it would be far worse.

I encourage all of my colleagues who belong to the Rural Health Care Caucus to take a very hard look at this. This confirms what we have been saying for some time. These are not scare tactics, these are actual facts.

Let me say, too, I know when this debate first started some of the national organizations that represent doctors and hospitals, perhaps nursing homes—certainly not any home health care—well, I take that back. There was a letter written by the home health care folks at one time, but certainly not hospices—indicating that they were lukewarm, warm to the bill, or would perhaps support it. I think the message was pretty clear—come to the breakfast or you won't come to lunch. That was pretty bare knuckles but they hoped that at least by insuring those who have insurance, that would make their situation better.

Then, of course, came the latest iteration to this bill of putting in people 55 to 65, and the national association, in regard to our doctors and our hospitals, said: Whoa.

Let me point out in Kansas and in many States throughout the country there never was the support. They knew exactly what would happen if we passed this bill and CMS would come knocking on their door. I might add it wouldn't be CMS that would actually do that, it would be the Internal Revenue Service under this bill, and that was one consideration where I made about a 15-minute speech and obviously not too many people paid attention. But all patients, all doctors, all nurses, all clinical lab folks, anybody connected with the home health care industry or hospice or nursing homes or whatever, should have known it is going to be the IRS that is going to enforce this as well as CMS, which has been doing most of the enforcing.

In Kansas, the Kansas Medical Society said: No, no, we are not going to go along with this bill. I am talking about the bill we have been talking about for some time. The Kansas Hospital Association was adamant. They said no. Obviously that was because of advice they got from 128 hospitals in my State, saying: No, we cannot reconcile with this because of cost, because of the rationing. We are only being reimbursed at 70 percent or less, as we talk about it—and the doctors about 80 percent.

Many doctors do not serve Medicare now in Kansas. Let me rephrase that. Some doctors don't serve Medicare in Kansas. If this bill passes, a lot of doctors simply will not serve Medicare. You can have the best plan or the best card in the world, it is not going to make any difference if you can't see a doctor. It is not worth a dime.

Then I have to say the Kansas Nursing Home Association and Kansas Home Health Care folks and the Kansas Hospice folks all said: No, this is not where we want to go. This is self-defeating. This is not going to do what the sponsors of the bill and what everybody for health care reform hoped they would actually see happen.

I don't know what the word is, I am—not overwhelmed, I am extremely glad; I am somewhat surprised but I am extremely glad that CMS again shined the light of truth into darkness. I commend Mr. FOSTER, the chief actuary. I recommend this as required reading for everybody who was going to vote for this bill and certainly with the latest iteration, where we are adding anywhere from 10 to 20 to 30 million people to Medicare, which will make the situation much worse in regard to Medicare being actuarially sound and costs going up, premiums going up, and also rationing, the dreaded rationing. It is not a scare tactic but actually a fact.

I yield my time.

The PRESIDING OFFICER. The Senator from Washington.

Ms. CANTWELL. Madam President, I have been on the floor now for about an hour listening to my colleagues on the health care debate. Certainly I want to express the opinion from many people in the Northwest. We know that doing nothing about health care certainly will guarantee that premiums will go up. We know it happened in the last 10 years; they have gone up 100 percent. We know that doing nothing now means they will go up 8 to 10 percent a year. We also know there is about $700 billion in waste in the system.

This is about what we can do to reform the system so we can stop the rise, the increase we are seeing in our premiums. There are many things in this legislation, changing fee-for-service systems so we are driving down the quantity of health care that is delivered instead of making sure that it is quality; making sure we make reforms in long-term care; making sure we give

the power to States to negotiate and drive down the costs. I know my colleague Senator COLLINS was on the floor with some of my other colleagues, the Senators from Oregon and Indiana, to discuss their ideas about how we improve cost containment.

I hope my colleagues in the next days will join us in the discussion about how we continually improve the bill to drive down costs, because doing nothing will not get us to that point.

(The remarks of Ms. CANTWELL and Ms. COLLINS pertaining to introduction of S. 2827 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. 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. CRAPO. Madam President, I ask unanimous consent to be able to enter into a colloquy with my Republican colleagues for up to 30 minutes, and that following those remarks, the Republican leader be recognized, and that following his remarks Senator DURBIN be recognized to speak.

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

Mr. CRAPO. Thank you, Madam President.

Madam President, I would like to speak on health care. The pending business before the Senate right now is actually the Omnibus appropriations bill, which the Senate moved to yesterday, after having started the debate on the health care legislation.

My motion is the pending business on the health care legislation, and so it is that motion I would like to talk about. Before I do so, I would like to again raise objection and concern to the fact that we have moved off the health care legislation debate to the Omnibus appropriations bill, both because I believe we should stay on the health care issue and work it through, but also because we moved to an Omnibus appropriations bill that we have not had an opportunity to review carefully and that raises the spending—I believe for these seven appropriations bills that have been compiled together, the spending is raised by an average of about 12 percent.

Once again, Congress is in a spending free fall, and whether it be the stimulus package or the appropriations for our ordinary operations of government or whether it be the bailouts or the tremendous other aspects of spending pressures and proposals, including the health care legislation we have, there seems to be no restraint in Washington with regard to spending the taxpayers' dollars.

But let's talk for a minute about the motion that was before the Senate before we moved off the health care legislation. It was a motion I raised to object to the tax increases on the middle class in America that are contained in the bill.

The motion I have is very simple. It focuses on the President's pledge. The President pledged that ''no family making less than $250,000 will see their taxes increase—not your income taxes, not your payroll taxes, not your capital gains taxes, not any of your taxes.'' The President pledged: You will not see any of your taxes increase one single dime.

So the motion I brought was very simple. It was simply to commit the bill to the Finance Committee to have the Finance Committee go through the 2,074-page bill and remove from the bill the taxes that are in it that apply to the middle class in the United States, as defined by the President here: being those who, as a couple, are making less than $250,000 a year, or those, as an individual, who are making less than $200,000 a year.

What we have seen is that not only has there been delay on reaching that goal but a counterproposal to the amendment has been brought up by the chairman of the Finance Committee, Senator BAUCUS. His counteramendment says:

> It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

A number of us are here today to talk about the fact that this sense of the Senate is designed to provide cover for those who do not want to vote to protect American taxpayers. It is a meaningless sense of the Senate. We are going to go through the sense of the Senate phrase by phrase.

I would like to ask my colleague from the State of Wyoming if he would like to step in on the first phrase and comment. The first phrase says what the amendment is: ''It is the sense of the Senate . . .'' Would my friend from Wyoming like to comment on what that means?

Mr. BARRASSO. I would be happy to. OK, so we agree, it is the sense of the Senate. It is meaningless in terms of actually having the force of law. The Senator talked about the issues of the spending and the taxes, so we came up with a sense of the Senate.

This is why we are asking people all across the country to read the bill. The sense of the Senate essentially means nothing. It says we kind of agree on this, but there is no law applied.

Mr. CRAPO. Exactly. It is very critical to point out, a sense of the Senate has no binding impact. It is just sort of what we think.

Let's go to the next phrase in the amendment: ''that the Senate should reject any procedural maneuver that . . . '' in other words, the Senate should reject a procedural maneuver.

First of all, if the Senate is going to reject a procedural maneuver, that refers to what is happening on the Senate floor, procedural efforts. It does not refer to any substantive measure in the bill. The amendment we had pending—which this is going to be a counterpart to—specifically refers to the substance of the bill and says the substance of the bill should be changed to take out the taxes, the hundreds of billions of dollars of taxes.

I wonder, before we go to the next phrase, does my colleague from Wyoming care to comment?

Mr. BARRASSO. Well, I do care to comment. I care to comment that the important thing is to get the taxes out of the bill—not what a sense of the Senate is, not some procedural maneuver. It is the specifics of removing the taxes from the bill.

When the President says, ''My plan won't raise your taxes one penny,'' which was his quote, we need to be able to make sure the President is telling us the truth, that we need to remove these taxes from the bill.

The Joint Committee on Taxation looked at this bill—specifically looked at this bill—and it said that 38 percent of the people earning less than $200,000 a year will see a tax increase—a tax increase under the Reid bill.

So we want to make sure the President's words go with what is in the bill. So we need to actually remove the taxes—not just have a sense of the Senate.

Then, when we look at the chief of staff of the Joint Committee on Taxation, he was asked a question at the Finance Committee, and he said, when it all ''shakes out,'' we would expect people who are going to be paying taxes are going to have incomes ''less than'' the number the President said.

So I want to get to the point of the Crapo amendment, the amendment that actually says: Get these taxes out of the bill. This is a bill that is going to raise taxes by $500 billion, and those are taxes that are going to impact all Americans.

At a time when we have 10-percent unemployment, when the Senate is being asked to increase the debt level by another almost $2 trillion, the last thing we need to be spending our time on is a sense of the Senate. We need to actually get to those taxes that are going to affect the people, the hard-working people of America get those taxes out of the bill.

So as we are looking at that Baucus amendment; it is very nice, but it reminds me of the Bennet amendment we had here last week, and I think everybody voted for it. The New York Times, in their editorial, said it was a meaningless amendment. I want an amendment with some teeth in it that I can vote for, and I am ready to vote right now.

Mr. CRAPO. I thank my colleague from Wyoming.

The next phrase in the amendment—referring to a procedural motion—says that ''would raise taxes on middle class families.''

There is nobody bringing a motion to raise taxes. My amendment says it is referring the bill to the Finance Committee to take out the taxes on those who earn less than $200,000 or $250,000.

I note that my colleague from Kansas has arrived.

Would the Senator care to jump in at this point?

Mr. ROBERTS. I will tread with great care, I would say to my distinguished friend.

I thank the Senator for this colloquy. But you asked what it means that ''the Senate should reject any procedural maneuver that''—that is in quotes—and what does that really mean?

Well, it applies only to the Senate procedural motions. By itself it would have no effect on any substantive provision. That is the way it is commonly understood under Senate rules. It means, if adopted, the amendment would not remove any provision that has been identified as a tax increase on middle-class taxpayers, which is precisely what the Senator is trying to do. So basically it means nothing.

Mr. CRAPO. I think that is exactly the point we are trying to point out.

The next phrase in the amendment says, ''such as a motion to commit the pending legislation to the Committee on Finance.'' Remember, that is referring to the previous phrase that refers to a motion to increase taxes.

The only thing we need to say about this phrase is, there is a motion to commit the bill to the Finance Committee, but there is not a motion to commit the bill to the Finance Committee to raise taxes. It is to cut taxes.

The next phrase in the amendment is to suggest that there is an effort to try to kill the legislation.

Now, this is my motion. I suppose the implication there is, by trying to take the taxes out of the bill, we are trying to kill the legislation. What does that mean? Well, that means if you take the taxes out of this bill, that the bill does not stand. I assume that is what the amendment is trying to say. The reason that it does not stand is because they are saying the bill does not increase the deficit. Well, the only way you can say that the bill does not increase the deficit is if you do not bring into consideration the nearly $500 billion of cuts in Medicare, the nearly $500 billion of taxes which are being put on the people of this country, and the additional budget gimmicks that do not start counting the spending for 4 years, plus a number of other budget gimmicks.

So what they are saying is, you cannot take out one of the key legs of this bill, which is the way we raise all the money for this massive new spending, or else it will kill the bill. I think it is a pretty interesting fact that they have actually admitted in their own amendment what kind of games are being played.

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

Mr. CRAPO. Yes.

Mr. ROBERTS. That phrase that the Senator just mentioned is, ''which is designed to kill legislation.'' My question has already been answered by the distinguished Senator, what does it mean, but there are no motions that have been considered or pending, including the pending motion to commit by the distinguished Senator—is the motion designed to kill this legislation? Because that is what you are going to hear on the other side, and that is not the case.

Mr. BARRASSO. Madam President, it seems to me that what the Senator is doing with the Crapo amendment is actually trying to help people, trying to help the American people by taking this burden of $500 billion of taxes off of their backs, off of their shoulders, helping the American people. That is what I see he is trying to accomplish, at a time where with a gimmick they are going to start taxing immediately and when the taxes go into play—today is the 11th of December; in 20 days they are going to start collecting taxes for services they are not going to give for 4 more years. So it seems to me what is going on here with the Crapo amendment is it is saving the American people by keeping dollars in their pockets, keeping dollars in the pockets of the hard-working people of our country.

I am not the only one who is saying that. There is a new CNN poll out today that specifically asks the question—because the President has made a statement about the fact that you wouldn't see your taxes go up—Do you think your taxes would or would not increase if HARRY REID's bill is passed, and 85 percent of the American people in a CNN poll out today said they believe their taxes are going to go up; 85 percent of the American people.

Mr. CRAPO. I would say to my colleague from Wyoming that they are right, if this bill is not committed back to the Finance Committee to take those taxes out.

The next phrase in the amendment is—this is referring to a procedural motion, we call it—''that provides tax cuts for American workers and families.''

In other words, they don't want to send it back to committee to have a procedural motion put into place that would stop them from providing tax cuts for American families.

Again, it is rhetoric. Read the motion. The motion does not say to take out any benefits in the bill for anybody in America, unless you consider taxing people to be a benefit to them, but it simply says the taxes in the bill that are imposed on people that the President identified to be in the middle class and would be protected must be removed from the bill.

Mr. ROBERTS. Would the distinguished Senator yield for a question?

Mr. CRAPO. Yes.

Mr. ROBERTS. As Republicans, there is probably no principle that unifies us more than keeping taxes low on American workers and families, and I don't think our friends on the other side would dispute that notion. Indeed, the Democratic Party assumed control of the White House almost a year ago, as everybody knows, and seated large majorities here in the Congress. The one unmistakable distinction between the parties is this: Our party has respectfully opposed—I underline the word respectfully—opposed numerous efforts by the majority party to impose broad-based taxes increases on American workers and families. So one only need to look at the stimulus debate or the budget debate or the cap-and-trade legislation, and I could go on and on and on, more especially with the health care debate, and the bill before us.

Don't you follow from that general principle?

Mr. CRAPO. Absolutely. Again, I believe what is going on here with this new amendment is simply an effort to sort of divert attention from the real issue that is before the American people, the motion that was before the Senate, before we were forced by a procedural vote yesterday to move off the bill, and that is the question of the taxes in the bill.

The final phrase refers to a couple of the provisions in the bill that do have some support for improving the tax circumstances for small businesses and the affordability tax credit, meaning the tax credit that will be utilized to implement the subsidies for insurance.

Again, we can say it any number of times, but the fact is the motion they are trying to avoid does not deal with either of these provisions of the bill; it deals with those provisions in the bill that tax the American people.

Mr. BARRASSO. I am fine with voting on this, but it doesn't mean anything. I think it is absolutely meaningless, the Baucus amendment. I want to get to the heart of the matter, the meat of the matter, which is the Crapo amendment. That is the one I think makes the difference for the American people. If I were a citizen sitting at home watching C–SPAN on a Friday afternoon saying, what is going on in the Senate, what do I want, what is going to help me, I would say I want to call my Senator and say: Vote for the Crapo motion because that is the one that is actually going to help keep money in my pocket. The sense of the Senate? Oh, that is nice, but it is meaningless.

I am ready to vote right now for the Crapo motion because that is the one I think is going to help possibly save my job if I am at home and working. I am worried about unemployment in the country, I am worried about the taxes and the impact that is going to have. Because I worry if we don't get these taxes out of here, it is going to be a job killer for our Nation and for families all across this country, in Idaho, in Wyoming, in Kansas, in Kentucky. I think we have great concerns for the economy and the 10-percent unemployment. We need to get those taxes out of there now.

Mr. CRAPO. The Senator is, in fact, right. If you go back and try to get a little perspective on the entire debate, most Americans would agree that we need health care reform, but when they say that, they are talking about the need to control the skyrocketing costs of their health insurance and the costs of medical care, and they are talking about making sure we have real, meaningful access to quality health care in America.

In his statements, the President has many times commented about different parts of that. We remember when he said, If you like what you have, you can keep it. Well, we have seen that is not true, and there will be and have been already amendments to try to address those questions.

Remember when he said it is going to drive down the cost of health care and drive down your health care premiums? Well, we have learned now that it doesn't do that either; it actually drives up the cost of health care insurance and it is going to drive up the cost of medical care in this country.

Remember when he said you will not see your taxes go up? In fact, he pledged that if you were a member of the middle class, whom he defined as those making less than $250,000 as a couple or $200,000 as an individual, you would not see your taxes go up. Well, this motion is focused on that part of the debate. What did we see happen? Instead of letting us fix the bill, send the bill back to the Finance Committee to make the bill comply with the President's pledge, we saw two procedural maneuvers, one to maneuver off the bill, to get off the bill and move to the omnibus appropriations bill; secondly, to put up a bait-and-switch amendment that makes it look as though there is some kind of protection being put in place when, in reality, it is nothing more than a sense of the Senate relating to procedural motions that don't exist. I agree with my colleague from Wyoming and with my colleague from Kansas.

I see we have several of our other colleagues joining us here now. We need to keep the focus on health care and we need to keep the focus on those core parts of the bill that are critical to the American people.

Before I ask my colleague from Kansas if he wishes to make any other comments, I will reiterate the point that my colleague from Wyoming made with regard to the American people's understanding of this issue. In that CNN poll that I believe showed over 60 percent—I think it was 61 percent—of the people in this country who do not want this bill to move forward because they are now understanding what it does, in that same poll, 85 percent of the people in this country believe that this pledge of the President is broken by this bill.

Mr. ALEXANDER. I wonder if I might ask the Senator from Idaho and the Senator from Kansas, both the Senators are on the Finance Committee, I believe, and have been working on this health care bill for a long time. It is typical of a big, complex bill such as this that it is difficult to pass, and you get a sense every now and then of whether it is likely to pass or unlikely to pass. This week has been a particularly difficult week for the bill. I have noticed the majority leader trying to create a sense of inevitability about the bill.

But, increasingly, it seems to me, with it becoming clear that with so much of it being paid for by new taxes, and then last night the chief actuary of the Centers for Medicare and Medicaid Services saying the cost is going up, premiums are going up; with the Mayo Clinic saying it is beginning to not take Medicare patients, and the idea of putting millions more Americans into a program already going broke which you are taking $1 trillion out of is a bad idea; I wonder if in all—and all this talk about history being made and the inevitability of this bill, that the Senator from Idaho might not think, looking back over this whole debate, that maybe there are a lot of different ways to make it—that maybe a growing number of Senators might be thinking—not saying yet—might be thinking that this bill would be an historic mistake and that all the king's horses and all the king's men are not going to be able to push this up over the top.

Mr. CRAPO. The Senator from Tennessee is right, and he has put his finger on one of the key issues that is going on here in the Senate that sometimes isn't highlighted as closely as I think maybe it should be. That is, while we are talking about the need to make sure this bill does not raise taxes on the middle class, to make sure that the bill does not increase the cost of health insurance premiums, and to make sure that we maintain quality of health care and don't cut Medicaid and Medicare, the real battle here is an effort to create a legacy to essentially put the government in control of the health care economy. That is the debate. That is the legacy. That is the history that those who are pushing the bill are seeking to make, and they are seeking to make it at the expense of those on Medicare, of those of the taxpayers in America; and of the costs, the cost curve that they said they want to drive down, dealing with the cost of our health care.

I see our leader is here.

Mr. McCONNELL. I say to my friends from Tennessee and Idaho, December 11, 2009 may be remembered as the seminal moment in the health care debate for those who are writing about what finally happened on this issue. There were two extraordinary messages delivered on this very day on this health care issue. They were delivered from CMS and from CNN. CNN told us how the American people felt about it: 61 percent, as the Senator from Idaho pointed out, telling us please don't pass this bill. A week ago, Quinnipiac said 14 percent more disapproved than approved; the week before Gallup said 9 percent more disapproved than approved. We can see what is happening here: widening public opposition.

And then CMS, the actuary, the independent government employee who is an expert on this, says this bill, the Reid bill, doesn't do any of the things it is being promoted to accomplish. So two important messages on December 11 delivered from CNN and from CMS.

Mr. ROBERTS. Would the Senator yield?

Mr. CRAPO. Yes.

Mr. ROBERTS. I wish to thank our distinguished leader for pointing that out. It has been a seminal event. As I said before, I have the privilege of being chairman of the Rural Health Care Caucus. There are probably 30 of us in a bipartisan caucus to try to protect and improve the rural health care delivery system. I took that report by Mr. Foster, who is the actuary of CMS, and said, this is required reading. I made the point that if you mention CMS to a beleaguered hospital administrator or a member of the board or any medical provider—doctor, nursing home, home health care, hospice; even hospice is cut in regard to the cuts—they know if a CMS representative is knocking on the door, that is a lot like sending a cold shiver down their spine thinking it is Lizzie Borden. Of all of the agencies that now are shining the light of truth into darkness in regard to the nature of this bill in increased costs, and yes, rationing—no, it is not a scare tactic—CMS is that agency. It would be amazing if we could get CMS to report back on, if we knew what it was—the media reports are how we get the information on this new iteration of a bill where allegedly we are going to add in people from 55 years old into the Medicare system. You do that, and now all of a sudden even the national organizations, let alone the State provider associations who have been opposed to this, to say, Whoa, we can't do that. That is going to break the system.

What I wish to point out and what I think is another piece of information that has sort of been overlooked, the CBO has estimated the cost to the Internal Revenue Service to implement taxes and penalties and enforce them—I am talking about the IRS now, not CMS, but the IRS that is going to implement and administer and enforce taxes and penalties on the bill—that cost is $10 billion estimated by CBO. That would double the budget size of the IRS. We have to train these people, and then you have to figure out what kind of questions they are going to ask of employers and employees in regard to the fines and the fees, you have to read the fine print. The American people understand this tremendous tax increase is going to be administered by the IRS and that is not going to be a happy circumstance. But those two things that the leader has brought out are absolutely primary in this debate.

I think a side-by-side is a straw man. I think it is very clear about that. I am

happy to comment on that further. I wish to give others an opportunity to speak.

Mr. ALEXANDER. If I can make a short comment, I thank the Senator from Idaho for his leadership on taxes. But Senator MCCONNELL's comment about those two events on December 9—the poll from CNN and the report from the Centers for Medicare and Medicaid Services chief actuary—made me think about the immigration bill 2 years ago, in 2007. There were a lot of our best Senators working to pass comprehensive immigration bill, including Senators MCCAIN, KENNEDY, KYL, MARTINEZ, Members on both sides of the aisle, who worked very hard to do it. There seemed to be a sense of inevitability that that bill might pass. The President was even behind it.

But then it began to have so many problems, and the red flags began to pop up just like they are popping up with this comprehensive health care bill. There came a time, perhaps much like December 10, when the sense of inevitability was replaced by a sense that we were making a historic mistake, and a bill that got on the floor with 64 votes only had 46 to get off.

I have a feeling this bill, the more we learn about it, the wiser thing to do is to let it fall of its own weight. Then we can start over, step by step, to reearn the trust of the American people by reducing health care costs. We can do that. That is the sense I have.

I appreciate the Republican leader's observation about those important events on the 9th.

Mr. CRAPO. Mr. President, I agree with my colleagues. I think the comment of our leader is very insightful. As you start seeing the evidence mount, and the fact that the American public is understanding the weight of this mounting evidence about this legislation, we could be at the tipping point right now, where it has become so evident that the purpose behind health care reform has not only been missed by this legislation, but it has been made worse—the objectives.

I point to this chart, the cost curve. When you talk to most Americans about what they believe the purpose behind health care reform is, the vast majority say it is to control the skyrocketing costs. Well, those who are promoting the bill say it does that, it bends that cost curve. Which cost curve? Is it the size of government? That goes up $2.5 trillion in the first full 10 years of implementation. The cost of health care—the CMS report came out, it is about the 10th report, but this is from the actuary of the Medicare and Medicaid system who analyzed this independently, and he says health care costs are going to go up, not down.

The CBO said the cost of insurance is going to go up, not down. The Federal deficit—they say the bill doesn't make the Federal deficit go up. In fact, regarding that, the only way they can claim that is if they implement their budget gimmicks of delaying implementation of the bill for 4 years on the spending side, while raising taxes now, or if they raise hundreds of billions in taxes and cut Medicare by hundreds of billions of dollars.

These things are starting to be understood by the American people. That is why I believe we are starting to see those kinds of answers in the polls. It is not just the CNN poll, as the leader knows. Many polls are showing the American people get it.

Mr. ROBERTS. Will the Senator yield for another question?

Mr. CRAPO. Yes.

Mr. ROBERTS. I would like to get back to the side-by-side amendment allegedly being offered by the chairman of the Finance Committee, the Senator from Montana. I said straw man, and that is pretty harsh, but I intend it to be. We have seen how, if the language is examined, the amendment, at a minimum, is a red herring. You can fairly say the amendment, rather, has no other purpose than to facilitate a strong argument.

On Tuesday, when Senator CRAPO laid down his amendment, the majority didn't show us this side-by-side amendment until shortly before we thought—and they thought—we were going to vote. So that very limited notice makes you think it may be more likely to distract from or muddy the clear question the Senator from Idaho brought; that is, the motion to commit before the Senate. The motion was designed to be to be straightforward, and the Senator did that.

A vote for the motion is a vote to send the Reid amendment and underlying bill back to the Finance Committee. Under the motion, the Finance Committee would report back a bill that eliminates the tax increases on middle-income taxpayers. One could not say it anymore simply. That is what the motion does. The other bill is a straw man.

After the remarks by the distinguished leader, I would say this may be a seminal event. I think that is one of the key votes where the other side could start to realize this and start to finalize this without all the rhetoric and ideology and philosophical support for this bill, and they could start the road back, if you will, of doing it in a step-by-step, thoughtful way—doing it, meaning real health care reform.

I commend the Senator. Again, this side-by-side is a straw man. The Senator is clear in what he wants to do. Under the Senator's motion, the Finance Committee would report back a bill that eliminates the tax increases for middle-income taxpayers. We can restart the debate in a bipartisan way, where we can agree on many common goals. I thank the Senator.

Mr. CRAPO. I thank my colleague. Mr. President, how much time remains?

The PRESIDING OFFICER (Mr. REED). Thirty minutes.

Mr. CRAPO. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Republican leader is recognized.

Mr. MCCONNELL. Mr. President, this follows along further with my colleagues who were discussing the CMS report.

Americans, of course, were told the purpose of reform was to lower costs, to bend the so-called cost curve down. But the report released last night by the administration's own independent scorekeeper, as we have been discussing on the floor of the Senate, shows the Reid bill gets a failing grade.

The chief actuary is the person the administration depends on to give its straightforward, unbiased analysis of the impact the legislation would have. This is an independent expert. It is the official referee, if you will. So this is quite significant.

According to CMS, the Reid bill increases national health spending. According to CMS, there are new fees for drugs, devices and insurance plans in the Reid bill and they will increase prices and health insurance premiums for consumers.

According to CMS, claims about the Reid bill extending the solvency of Medicare are based on the shakiest of assumptions.

According to CMS, the Reid bill creates a new long-term insurance program, commonly referred to around here as the CLASS Act, that CMS actuaries found faces a ''very serious risk of becoming unsustainable.''

The CMS found that such programs face a significant risk of failure.

The Reid bill pays for a $1 trillion government expansion into health care, with nearly $1 trillion in Medicare payment cuts.

All of this, I continue to be quoting from the CMS report.

The report further says the Reid bill is especially likely to result in providers being unwilling to treat Medicare and Medicaid patients, meaning a significant portion of the increased demands for Medicaid services would be difficult to meet.

The CMS actuary noted the Medicare cuts in the bill could jeopardize Medicare beneficiaries' access to care.

The CMS actuary also found that roughly 20 percent of all Part A providers—that is hospitals and nursing homes, for example—would become unprofitable within the next 10 years as a result of these cuts. As a result of those Medicare cuts, 20 percent of hospitals and nursing homes would become unprofitable within 10 years.

The CMS actuary found that further reductions in Medicare growth rates through the actions of the independent Medicare advisory board, which advocates have pointed to as a central linchpin in reducing health care spending, ''may be difficult to achieve in practice.''

The CMS further found the Reid bill would cut payments to Medicare Advantage plans by approximately $110 billion over 10 years, resulting in ''less

generous benefit packages'' and decreasing enrollment in Medicare Advantage plans by about 33 percent. That is a 33-percent decrease in Medicare Advantage enrollment over 10 years.

What should we conclude from this CMS report? The report confirms what we have known all along: The Reid plan will increase costs, raise premiums, and slash Medicare.

That is not reform. The analysis speaks for itself. This day, this Friday, as we were discussing yesterday, is a seminal moment. We have heard from CMS, the Government's objective actuary, the bill fails to meet any of the objectives we all had in mind. We also heard from CNN about how the American people feel about this package: 61 percent are opposed; only 36 percent are in support.

The American people are asking us not to pass this, and the Center for Medicaid Services' actuary is telling us it doesn't achieve the goals that were desired at the outset.

How much more do we need to hear? How much more do we need to hear before we stop this bill and start over and go step by step to deal with the cost issue, which the American people thought we were going to address in this debate?

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. CASEY. 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. CASEY. Mr. President, we are in our discussion of health care. We have been focused on a couple of major goals. The obvious goals that I think are a major part of the legislation we are debating are controlling costs, the goal of providing better quality of care, providing health care to millions of Americans—tens of millions, really—who would have no chance to get that kind of coverage without this legislation, and also the concern we have about not only controlling costs, but we have legislation on the floor that actually reduces the deficit by $130 billion and beyond the 10 years by hundreds of billions.

One of the concerns we have is that in the midst of a health care debate about numbers and the details of the programs is that we also do not forget that some parts of our health care system work well but often might need an adjustment or an amendment or a change that would benefit a vulnerable population of Americans who do not have the kind of coverage or protection or peace of mind they should have.

One of the more successful parts of our health care system as it relates to new parents, especially new mothers and new children, is what is known by the broad category of nurse home visitation programs. They have been enormously successful over many years.

I have an amendment I filed for this health care bill called the nurse home visitation Medicaid option amendment. It sounds a little complicated, but it is actually rather simple. It is part of what we need to do in the next couple of days and weeks as we complete our work on health care.

One point to make initially is that we know these nurse home visitation programs work. They get results for new parents, new mothers, and have positive benefits to a new mother and her children.

We all have had the experience, if we are parents, of the anxieties of what it is like to be a new parent but especially what a new mother goes through—all of the anxiety. It is not limited to one income group. No matter what income you are, no matter what background, it is a challenge to fully understand what it is like to have a baby and to care for that child appropriately. That is one of the underlying concerns we have.

In our health care system, we have to do everything possible to give that child a healthy start in life, and the best way to give a child a healthy start is to make sure his or her mother—and hopefully both parents—is able to handle the pressures and manage the anxieties that so many new parents have.

The amendment I filed supports optional nurse home visits. That means that if someone chooses not to take advantage of this program, obviously, they do not have to. The amendment simplifies the process for providers of nurse home visitation to seek Medicaid reimbursement. Some will say there is Medicaid reimbursement now. Yes, there is, but it gets complicated to a point where a lot of States are not getting the full benefit of that reimbursement. This amendment will impact the lives of Medicaid-eligible pregnant women and their children, and the impact is profound. The amendment is cosponsored by Senator GILLIBRAND of New York. It will allow States the option to seek more adequate reimbursement for nurse home visitation services. Again, a State is not forced to seek greater reimbursement, but I believe a lot of States could and should take advantage of this kind of an option.

In Pennsylvania, we have been trying to do this for years, even in the midst of having very effective nurse home visitation programs. One can just imagine how valuable that is for a new mother, that they can get advice and help from a nurse or another kind of professional and get them through the early days and weeks of being a new parent.

I believe a State such as Pennsylvania that has had a track record of these kinds of programs that have a direct and positive impact on children and their families, their mothers especially, should be able to take advantage of this, as I am sure many other States.

The amendment helps States cut through the redtape and allow these evidence-based nurse home visitation services—let me say those words again: ''evidence-based.'' This is not some theory; this is not some maybe—let's try to create a program. These programs work. The evidence is, in a word, irrefutable over many years that these nurse home visitation programs work. We want to allow States to be reimbursed under a State Medicaid option.

We have about 30 years of research to back up the following claims. Let me give four or five points.

We start with a category for every 100,000 families who are served by nurse home visitation programs or nurse-family partnership programs—all in that same category.

For every 100,000 families, 14,000 fewer children will be hospitalized for injuries and 300 fewer infants will die in their first year of life. That alone, that number alone is worth making sure States have this option. What is the price of saving 300 infants a year out of 100,000 families? It is incalculable. There is no value we could put on that kind of lifesaving as well as down the road saving money.

Let me give a couple of other examples.

For every 100,000 families served by these nurse home visitation-type programs, 11,000 fewer children will develop language delays by age 2. That is a profound impact on the child—his or her ability to achieve in school and then his or her ability to develop a high skill and therefore contribute positively to our economy. There is no price one can put on 11,000 new children learning more at a younger age.

Out of 100,000 families, 23,000 fewer children will suffer child abuse and neglect in the first 15 years of life. Again, there is no way we can quantify that with a number or budget estimate. But I would like to say we support strategies around here that are evidenced-based and scientifically based to make sure children are not abused, that they live through the first couple years of their lives when they are at risk of dying.

One more statistic. Out of the 100,000 families we use as a measurement, 22,000 fewer children will be arrested and enter the criminal justice system in the first 15 years of their lives. Just like the statistic about the first year of life and surviving the first year of life or not having in this case 23,000 more children suffer child abuse and neglect, these are impossible to measure. In a sense, it is the measure itself that we save children's lives, we make them healthier. They and their families are able to contribute more to society.

This is the right thing to do to give our States the option—just the option—of seeking greater reimbursement for these important services. I have seen it firsthand.

Many years ago—it must be at least 10 years ago—in Pennsylvania, I actually went to the home of a brand-new mother, a lower income mother in northeastern Pennsylvania. We walked

in the door, with her permission, with the nurse who was working with her after she left the hospital with her new baby. There is no way to put into words how valuable that relationship was between a new mother and a nurse, between a new mother and a health care professional to give her the start in any circumstance but especially if a new mother has financial pressures which are extraordinary and almost unbearable for some new mothers or has pressures as it relates to her husband or boyfriend, whoever is part of her life. Sometimes there is violence. Sometimes there are other pressures that some of us cannot even begin to imagine, in addition to the obvious pressure of being a new mother, being a new parent, and wanting to do the right thing.

These programs, as the evidence and science tell us, work to give new mothers peace of mind and to give States the ability to directly and positively impact the lives of that new mother and her child.

So we should give States this option, and that is why I urge my colleagues to support the nurse home visitation Medicaid option amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KYL. 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. KYL. Mr. President, I ask unanimous consent that following my remarks Senator BROWN of Ohio and then Senator LEMIEUX of Florida be recognized in that order.

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

Mr. KYL. Mr. President, each day it seems there is a new analysis of the Democratic proposal on health care that suggests it is not such a great idea. Today, a devastating report was made public by the Obama administration itself—the Department of Health and Human Services—and their group that is in charge of Medicare and Medicaid. It goes by the initials CMS. Specifically, the Chief Actuary, Richard S. Foster, of the Centers for Medicare and Medicaid Services, issued a report about the effect of the Reid legislation on health care as it pertains to a whole variety of things—the cost of the legislation, the effect it is going to have on taxes, on premiums, on benefits, the cost with respect to Medicare and the kinds of things that will occur to beneficiaries in Medicare, and so on. It is a complete report by a person who I think all would agree is not only qualified to speak to these things but also quite objective, as the chief actuary of CMS. He reached a number of very interesting conclusions, and I want to briefly discuss eight of them.

The first thing is that he noted his estimates were actually not a full 10-year estimate, and I will quote what he said here.

> Because of these transition effects and the fact that most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period, the cost estimates shown in this memorandum do not represent a full 10-year cost for the proposed legislation.

The reason that is important is we have been saying here for quite a long time that you can't just look at the first 10 years in order to see the full impact of this legislation because for the first 4 years most of the benefits don't exist. They are simply collecting taxes and fees and revenues, and then is when the benefits kick in, as a result of which, when they say it is all in balance, it is in balance because they are collecting money for 10 years but they only have to pay for benefits for 6 of those 10 years. So the real question is: What does it cost over the first full 10 years of implementation? And it turns out that is about $2.5 trillion.

We have known this, and we have made the point. I think even the chairman of the Finance Committee has acknowledged the $2.5 trillion if you take the first 10 years of implementation. But I think it is good to actually have that confirmed now by the Chief Actuary of CMS.

Secondly, a point I have been making all along is that when the President said repeatedly: If you like your insurance, you get to keep it, that is not true; and it is not true for a variety of reasons under the bill, and again this report confirms what we have been saying is in fact true; namely, that a number of workers who currently have employer-sponsored insurance would lose their coverage. In addition to that, seniors who are enrolled in private Medicare plans, which are known as the Medicare Advantage plans, would lose benefits, and many of them would no longer be covered.

Let me read two quotations, first relative to employer-sponsored insurance; and, second, people who are on Medicare Advantage plans. I am quoting now.

> Some smaller employers would be inclined to terminate their existing coverage, and companies with low average salaries might find it to their and their employees' advantage to end their plans. The per-worker penalties assessed on nonparticipating employers are very low compared to prevailing health insurance costs. As a result, the penalties would not be a significant deterrent to dropping or forgoing coverage.

What does that mean? The employer under this bill has an obligation to provide insurance to his or her employees. If they don't do that, then they pay a penalty. The problem is that the penalty is much less than the cost of buying the insurance. So what we have been saying all along, and what the CMS actuary confirms here, is that in a lot of cases, small employers—and particularly companies with low average salaries—will find it to their advantage to drop the insurance coverage and have their folks go into the so-called exchange programs. The penalty these employers pay will be much less than what they are paying now to provide insurance.

So these folks who are very happy with the insurance they have right now are not going to be very happy when they get something substantially less than that through the so-called exchange. They may like the coverage they have now, but, unfortunately, what the President promised, that they would get to keep it, is not true. And this is confirmed by what I read to you.

What about folks on Medicare Advantage? These are senior citizens above 65 who are on Medicare, and what they have chosen to participate in is the private insurance coverage component of Medicare called Medicare Advantage. Here is the quotation.

> Lower benchmarks would reduce Medicare Advantage rebates to plans and thereby result in less generous benefit packages. We estimate that in 2015, when the competitive benchmarks would be fully phased in, enrollment in Medicare Advantage plans would decrease by about 33 percent.

Everybody has acknowledged there would be a reduction, but there has been little debate about how much it would be. Our initial projections are borne out by the CMS actuary—a decrease in enrollment in Medicare Advantage by about 33 percent. That is a third. This is important to me because 337,000 Arizonans participate in Medicare Advantage—almost 40 percent of all our seniors. And a third of them, if this works across the board, are going to lose their plan because of this. In any event, they are all going to lose benefits because of ''the result in less generous benefit packages.''

This hasn't been much in dispute, because the Congressional Budget Office itself has described precisely how much the benefit packages will be reduced by, and it is 90-some dollars. It is from 130-some dollars in actuarial value down to 40-some dollars in actuarial value, which is a huge reduction, obviously. So reduction in benefits; a third of the people no longer on Medicare Advantage. The bottom line, whether you are privately insured through your employer or you are a senior citizen in Medicare Advantage, you are not going to be able to keep the benefits and the plan you like and have, notwithstanding the President's commitment to the contrary.

Third, Medicare cuts. We have been talking a lot about Medicare cuts, and my colleagues on the other side say: Well, we don't think that the Medicare cuts are the way you describe them. Seniors are still going to have access to doctors and so on. This report is devastating in blowing a hole in that argument. Let me quote a couple of the things they say.

> Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and, absent legislative intervention, might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

This is what we have been predicting. If you impose extra costs and mandates

on the people who are providing the care—whether it be the hospitals, the physicians, home health care, or if you are taxing something such as medical devices—all of those impose costs on the people who are providing these medical benefits. What the CMS actuary is saying here is that the combination of those things would potentially jeopardize access to care for the beneficiaries. There aren't going to be as many of these people in business to provide care for an increasing number of people.

Let me go on with the quotation that I think will make this clear:

Simulations by the Office of the Actuary suggest that roughly 20 percent of Part A providers [hospitals, nursing homes, home health] would become unprofitable within the 10 year projection period as a result of the productivity adjustments.

In other words, 20 percent of the hospitals, home health care folks and others are not going to be profitable anymore. They are going to be out of business because of the burdens that are being placed upon them in this legislation. What happens when you have the baby boomers going into the Medicare Program? Under the latest idea from the other side of the aisle, we are even going to have 30 million potentially being able to join Medicare—the folks from 55 up to 65—but you are going to reduce by 20 percent the number of folks to take care of them—the hospitals and home health care and so on. Obviously, you have a big problem. Access will be jeopardized, as the actuary says.

This is where rationing, in effect, comes in. There simply aren't enough doctors, hospitals, and others to care for the number of patients who want to see them. This is how it starts. First, long delays, long lines, long waiting periods before you can get your appointment, and eventually denial of care because there is simply nobody to take care of you.

This is exacerbated by something else in the legislation, which is the fourth point here. The actuary talks about the independent Medicare advisory board. What is happening is that Medicare is being cut in three different ways: one, Medicare Advantage, which I mentioned; two, the providers are being slashed in the reimbursements that they are receiving; and three, this legislation creates an independent Medicare advisory board that is supposed to make recommendations on how to effect huge reductions in the cost of Medicare, and the primary way they will do that is by reducing the amount of money paid to doctors, to hospitals, to others who take care of patients. That, obviously, will also result in less care for the senior citizens.

If the cuts are so drastic that Congress says no, we are not going to do them, then you don't have the savings the bill relies upon to pay for the new entitlement. So one of two things happens, and they are both disastrous: Either you have these huge cuts, which are devastating for access to care or the cuts are so unrealistic they do not go into effect, in which case the legislation can't be paid for. And then I guess you are going to have to raise taxes on the American people because you aren't able to effect the savings from Medicare.

Here is what the actuary says:

In general, limiting cost growth to a level below medical price inflation alone would represent an exceedingly difficult challenge.

That is the challenge being put before them here—an exceedingly difficult challenge.

Actual Medicare cost growth per beneficiary was below the target level in only 4 of the last 25 years, with 3 of those years immediately following the Balanced Budget Act of 1997; the impact of the BBA prompted Congress to pass legislation in 1999 and 2000 moderating many of the BBA provisions.

What does that mean? In 1997, Congress passed the Balanced Budget Act, which drastically reduced the payments to these providers in order to cut the cost of Medicare. Three out of the four years in which the costs were reduced, it was immediately following that legislation. But starting in 1999 and into the year 2000, Congress realized those cuts were too deep; you were not going to get doctors and hospitals to continue to take care of patients if we continued to cut what they were paid for their services. So the cuts were ameliorated and, as a result, the savings were not achieved.

What the actuary is saying here is if that same thing happens again, if these cuts are so drastic we actually don't let them go into effect because they would be self-defeating, then you will not have the savings that have been promised and scored here as enabling this legislation to be so-called ''budget neutral.'' It won't be budget neutral. So as I said, one of two things will happen, and both are bad. Either you have the cuts, which are devastating for seniors or you don't have them and they are devastating to taxpayers.

Five is Medicare expansion. I think all of us agree on both sides of the aisle that Medicaid is a very vexing problem because the States have to pay for a percentage of the Medicaid patients and the States are generally in very poor financial shape and they do not need more people added to the Medicaid rolls that can't pay for them.

My Governor was in town earlier this week, and she said: Please, please, don't add people to the Medicaid rolls and expect the States are going to be able to pay for them. Let me read a couple of the quotes from this actuarial report.

Providers might tend to accept more patients who have private insurance (with relatively attractive payment rates) and fewer Medicare or Medicaid patients, exacerbating existing access problems for the latter group.

That latter group, of course, is the Medicaid group. The problem is that reimbursement is so low for Medicaid, frankly, they are the last patients a doctor sees, and their care is not the best. If we are going to provide care for a group of people, we need to do it right. Unfortunately, this is how rationing begins if you don't have enough money to do it right.

Then let me conclude with this quotation.

[This] possibly is especially likely in the case of the substantially higher volume of Medicaid services, where provider payment rates are well below average.

And that is my point.

Therefore, it is reasonable to expect that a significant portion of the increased demand for Medicaid would be difficult to meet, particularly over the first few years.

What they are saying is that there aren't going to be the physicians and the other people to care for the Medicaid patients here and, as a result, the promise we have made to these people we are not going to be able to keep.

Enrolling in Medicaid does not guarantee access to care by a long shot.

No. 6. Again, this is something we have been saying. This is not really too controversial because the Congressional Budget Office has said the same thing that the Actuary here says. But it is always good to have a backup opinion. This is the tax on drugs, on devices, and on insurance plans. We have all been saying of course those costs are passed on to the consumer in the form of higher premiums or, in a couple of cases, higher taxes. That is what is demonstrated:

Consumers will face even higher costs as a result of the new taxes on the health care sector.

I might just say before I read the quotation here, it doesn't make any sense to me why, in order to pay for this new entitlement, you would tax the very people you want to take care of. Tax the doctors, insurance companies, device manufacturers that make the diabetes pump or the stent for a heart patient or some other device that improves our health care these days? Let's tax them? I am saying maybe you want to tax liquor or tobacco or something, but why tax the things that make people healthier? Go figure. That is what the bill does.

Here is what the Actuary says:

We anticipate that such fees would generally be passed through to the health consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of approximately $11 billion per year in overall national health expenditures, beginning in 2011.

Remember how we were going to drive costs down with this bill? We weren't going to be paying as much? The Actuary says:

We anticipate such fees would be generally passed through to the consumers in the form of higher drug and device prices and higher insurance premiums, with an associated increase of $11 billion a year.

This is going backward, not forward. The whole idea was to reduce costs and premiums. Instead, they are going up.

No. 7. Here is another tax. We are going to tax the higher premium plans. In response—this is a 40-percent tax on

these plans. What will employers do? According to the Actuary:

. . . employers will reduce employees' health care benefits.

That makes sense. If you are going to tax an insurance plan that has a lot of good benefits in it, then the employer is going to say: Rather than paying that tax, I will reduce the benefits—precisely what CMS says. This is another case in which if you like what you have, sorry, you are not going to get to keep it. We are going to tax it. Then the employer is going to reduce the benefits.

Here is the quotation from CMS:

In reaction to the excise tax, many employers would reduce the scope of their health benefits.

This is exactly what we have been saying.

Here are seven specific ways in which the CMS Actuary, working for the Obama administration Department of Health and Human Services, has verified the complaints Republicans have been making about this legislation for weeks—that it will raise premiums, it will raise taxes, it will raise costs. It will raise the cost of health care. It will raise the cost to the government. It will provide fewer benefits. It will result in the transition of people from private insurance to the exchange which is created in here and will result in less access to care because there will be fewer providers to take care of more people. What a wonderful reform.

This is why, when I talk about this legislation, I do not talk of health care reform. I am reminded of the line from a novel in which the individual says:

Reform, sir? Don't talk of reform. Things are bad enough already.

Indeed, they are. We do have problems. One of those problems is premium costs going up.

I note that my colleagues in the House of Representatives on the Republican side offered an amendment which, according to calculations of the Congressional Budget Office and according to the House Republicans, would have actually reduced premiums by $3,000 a year for the average family rather than increasing them. Republicans have good ideas about attacking the specific problems we face today. What we do not need is something under the guise of reform which is so massive, so intrusive into our lives and, with all due respect, not well thought out in terms of its long-range implications.

What you end up with at the end of the day, according to CMS now, according to the Actuary of the U.S. Government Health and Human Services, CMS, it raises premiums, raises taxes, reduces access to care, increases the cost, and provides fewer benefits. I cannot imagine how we could go home at Christmastime and say to our constituents: This is what we are giving you for Christmas this year.

The PRESIDING OFFICER. Under the previous order, the Senator from Ohio is recognized.

Mr. BROWN. Mr. President, I rise to speak in opposition to a provision in the Patient Protection and Affordable Care Act that would impose a 40 percent excise tax on certain health insurance plans.

It is my strong belief that a benefits tax is the wrong way to pay for health reform legislation.

Beginning in 2013, this legislation would impose an excise tax of 40 percent on insurance companies and plan administrations for any health insurance plan that is above the threshold of $8,500 for singles and $23,000 for family plans.

The tax would apply to the amount of the premium in excess of the threshold.

This tax would not only be imposed on basic health benefits, it would be imposed if the combined value of basic benefits, dental benefits, and vision benefits reaches the $8,500 limit.

In other words, Americans would be better off without dental and vision coverage than with it.

How could a disincentive to dental and vision coverage be a good idea? The answer is, ''it's not.''

In subsequent years, increases in the benefit thresholds will be tied to the consumer price index plus one percent.

What this means is that more and more workers and employers will be affected in subsequent years.

In fact, the Congressional Budget Office, CBO, estimates that, by 2016, this benefits tax would affect 19 percent of workers with employer-provided health coverage.

CBO further projects that revenues resulting from the tax would increase by 10–15 percent every year in the second decade after the tax takes effect.

And though this appears to be a tax on insurance companies, we should not be fooled.

Insurance companies are likely to pass these costs onto their customers—forcing employees to pay higher premiums or encouraging employers to cut or limit coverage.

Health reform legislation should not penalize middle-income Americans who have forgone salary and wage increases in return for more generous health benefits.

I remember, as the Presiding Officer in his leadership in the Banking Committee remembers, during the auto discussions, when President Bush first moved to help the auto companies that were under such duress, many people on the other side of the aisle saw the legacy costs as something bad, the legacy costs the auto companies had. In fact, these legacy costs were benefits negotiated by unions. Those workers had been willing to give up present-day wages to have better health insurance and better pensions. This is the same kind of issue.

And health reform legislation should not encourage the elimination of existing health benefits.

Instead, health reform legislation should ensure that Americans who have negotiated good health benefits—including dental and vision coverage—are able to keep those benefits without punishment.

I have heard many of my colleagues argue that this excise tax will ''bend the cost curve'' of health care costs and expenditures.

However, the Commonwealth Fund found that ''there is little empirical evidence that such a tax wcould have a substantial effect on health care spending.''

And is makes no sense to bend the cost curve by compromising access to needed health services now—leading to higher health care costs later.

You are squeezing on a balloon, not changing the long-term trajectory of health spending.

To bend the cost curve, we need to identify and reward the provision of the right care, in the right settings, at the right time.

We need to target duplication, promote best practices, and clamp down on those who overprice health insurance and health care products and services—exploiting their role in ensuring the health of the American people.

We need to give Americans more purchasing power and inject more competition into the health care marketplace.

We don't need to reverse the clock on health care progress by discouraging Americans from having good health coverage.

There is so much that is critically important in health reform legislation—from delivery system reforms to prevention and wellness initiatives to provisions which strengthen Medicare to making insurance more affordable and accessible for all Americans—but this counterproductive tax on middle-income Americans is not a provision I can support.

That is why I have cosponsored an amendment with Senator SANDERS of Vermont that would eliminate this benefits tax and instead impose a surtax on the very wealthiest earners—those who benefitted so much from the Bush-era tax cuts.

Our amendment, as modified, would replace the benefits tax on health insurance plans with a 5.4 percent surtax on adjusted gross income for individuals who earn more than $2.4 million a year and couples who earn more than $4.8 million per year.

Instead of taxing middle class Americans for having good health coverage, our amendment would help address the disproportionate impact of the Bush tax cuts—which were outrageously tilted toward the wealthiest of the wealthy.

Multimillionaires and billionaires fared far better than middle-class families under the Bush Administration. Let's not continue that tradition in this Congress.

The PRESIDING OFFICER (Mr. KIRK). The Senator from Florida.

Mr. LEMIEUX. Mr. President, it is always good to follow my colleague from

Ohio. I rise to speak about the health care bill. I, specifically, wish to speak about this new report we have received from the Office of the Actuary from the Centers for Medicare & Medicaid Services. This report, unfortunately, confirms many of the problems we already knew. This report comes from an independent actuary who works in the very agencies that have to implement our Federal health care programs. This actuary has reviewed the proposal before us, the proposal that is intended to be health care reform. The review and report of this actuary shows significant problems with this proposal and why we must start over and take a step-by-step approach.

I had the opportunity to read this report this afternoon in my office, word for word, and go through it line by line. I hope all my colleagues do on both sides of the aisle. There are many troubling things this report shines light upon. First, the proposal we are debating increases the cost of health care. For Americans who are at home and might be watching this to see various Senators on the floor of this great body, they think the reason we are here is to reduce the cost of health care and to promote more access. Those are the two big goals. That is what the President told us. We are going to lower the cost of health care. This report shows, national health care expenditures are going to go up from 16 percent of the gross domestic product to 20 percent.

The chief actuary says, on page 4 of this report, we are going to spend $234 billion more on health care over the next 10 years. We are going to spend more on health care. We are not going to reduce costs. We are going to increase costs.

Moreover, the Federal Government, in its provision of health care, is going to spend $366 billion more in health care provisions. We are told this proposal is budget neutral or it actually creates less of a deficit. It cuts the deficit of the Federal budget. But as has been revealed this week—and this is just gimmickry—the taxes start before the benefits. For 4 years, we pay the taxes and the benefits don't start until 2014. So 4 years of penalties without any benefits. This is similar to if you were to go buy a home and you went to buy the home and you said: We are going to live here for the next 10 years, and the real estate agent said to you: That is fine. You are just going to pay for the first 4 years, but you don't get to move in until 2014.

For families sitting around the kitchen tables, that is not how they balance their budgets. But that is this strange world that Washington is, that you can set up this budget gimmickry in order to get it to so-called budget neutrality. The actuary of CMS recognizes that. He says, on page 2, most of the coverage provisions would be in effect for only 6 of the 10 years of the budget period.

> The cost estimates shown in this memorandum do not represent a full 10-year cost of the proposed legislation.

It is not budget neutral. It is just a gimmick.

The second problem the actuary points to is, it jeopardizes access to care for seniors. My colleagues have been saying this for the past couple weeks. You can't take $½ trillion out of Medicare and have it not hurt the provision of health care for seniors. This plan is going to gut Medicare as we know it. It severely cuts funding for Medicare.

In this report, it goes through all the cuts to Medicare Advantage, to home health, to hospice. The actuary goes through all these cuts. What does the actuary conclude is going to be the result? Our friends on the other side of the aisle say this is not going to cut Medicare; it is going to save Medicare. How do you take $½ trillion out and save Medicare? The actuary understands it. He knows that doctors who provide services under Medicare for seniors or for the poor under Medicaid aren't going to take these reimbursements anymore. They will not see people and provide health care. So it is not health care reform if the doctor will not see you.

Right now, in this country 24 percent of doctors aren't taking Medicare; 40 percent are not taking Medicaid. The actuary says providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and might end their participation in the program, possibly jeopardizing access to care for beneficiaries.

The second reason we are doing health care reform, access to care, is going to be hurt for seniors by this bill. That is on page 9, for those who are following at home. By the way, we are going to put this report on our Web site at lemieux.senate.gov. If you want to read it, you can read all the details.

The next thing the actuary discovers as a problem with this bill is that for the 170 to 180 million Americans who have health insurance, your premiums are going to go up, not down. We are not going to bend the cost curve down. Health care will be more expensive, more expensive than if we were to do nothing and not implement this bill at all.

The chief actuary says premiums for the government-run plan, for example, would be 4 percent higher than for private insurers. So we don't achieve that goal. What is going to happen when we put all this burden on businesses? Because we know that under this program we are going to penalize businesses if they don't provide health insurance. We are going to penalize individuals if they don't provide health insurance. So what are small businesses going to do who are hardly making it now? In Florida, we have 11 percent unemployment. Our small businesses are suffering.

The actuary says on page 7, some small employers would be inclined to terminate their existing coverage. So they will drop their health insurance. You are an employee in a small business, they drop your health insurance. Now you must go buy the Federal program, where you will be subsidized. What does that mean? It means every man and woman will be paying taxes to help pay for health care insurance, taxes we can't afford, spending we can't afford, not in a world where we have a $12 trillion budget deficit. We are just pushing the cost off on our children and grandchildren. That is when this deficit is going to come home to roost.

The actuary also says the excise tax on high cost employer-sponsored health insurance is going to cause employers to scale back coverage. So if you have one of the better health care plans, the Cadillac plans, your employer will not be incentivized to give you less coverage, less benefits, less access. Is that what we thought reform was supposed to be?

Now we also know from the actuary we are going to raise taxes in this bill. As my friend, the Senator from Arizona, was saying, we are going to tax device makers. We are going to tax pharmaceutical companies, the implements and devices and medicines that save our lives. We know there is $64 billion in penalties in this bill. The actuary says, on page 5, if you are a small business or you are an individual and you don't provide the insurance, you are going to be taxed, penalized, $64 billion in penalties.

The actuary says:

> We anticipate that such fees would generally be passed to health consumers—

These are the taxes on the devices and the drugs—

> in the form of higher prices and higher insurance premiums.

I also wish to address one point before concluding. My friends on the other side have been saying there are not going to be any cuts to benefits because we will run a more efficient system. There is going to be less fraud and abuse and waste.

We all want that. That makes a lot of sense. But the actuary, in evaluating this—and he talks about it on page 12—finds that the cuts and the reductions are negligible. In fact, he can't even sufficiently provide evidence to know what the estimates of savings might be; at best, $2.3 billion for all the efficiency and savings. Remember, this is a $2.5 trillion program. There is $2.3 billion in savings, like 1 percent. So it is not the efficiency that is going to make up the cuts; it is going to be a cut in benefits to seniors. It will be higher insurance premiums for Americans. That is not health care reform.

It is why the Wall Street Journal called this bill the worst bill ever. In talking about this new proposal to expand Medicare and drop the age for Medicare, this morning the Wall Street Journal corrected itself and said that is even worse than the worst bill ever.

Similar to the Presiding Officer, I am new to this Chamber. I have been here

about 90 days. It is a great honor to serve in the Senate, representing 18 million people from Florida, but it is also a little bit frustrating. The way the Senate works is not the real world. It is not like moms and dads who sit around the kitchen table and try to figure out how to make ends meet and they can only spend as much money as they take in. That is not how we work in this institution. We don't work in a reasonable way.

My colleague from Utah will speak in a minute. He was on the floor the other night talking eloquently about how, when you do real reform, you get 80 Senators to vote on a proposal. If this bill passes, 60 Democrats will vote for it, 40 Republicans will not. If just one Democrat would feel their conscience and not vote for this bill, we could start over. We could work together in a bipartisan way and help those 45 million Americans who don't have health insurance. But we wouldn't do it by robbing from Medicare. We wouldn't do it by raising taxes. We wouldn't do it by creating a $2.5 trillion new program.

I have struggled to try to figure out a way to explain to the people how bad this bill is. I know it is hard. You are sitting at home, around the kitchen table, trying to understand what Washington is up to. It is hard to understand. I have thought about cultural references and historical references, maybe even things in pop culture that I could use as an analogy to try to explain what is going on in the Senate. The only thing I can think of is the ''Wizard of Oz.'' In the ''Wizard of Oz,'' Dorothy gets thrown into the tornado in sort of an alternate reality, a place that doesn't play by the same rules. That is sort of the Congress. Dorothy and the lion and the tin man and the scarecrow are told: Follow the yellow brick road, you will get there. All your answers will be solved. Everything will be great.

That is sort of like this phrase we hear around here: Make history, make history, just get it done. Pay no attention to the cuts in Medicare. Pay no attention to the Medicaid you will put on the States that can't afford it. Pay no attention to the higher taxes and the higher premiums people will have to suffer under. Similar to the scarecrow, who doesn't have a brain, it is not very thoughtful to put more expenses and more taxes on the States with Medicaid when they can't afford it. Similar to the tin man, who doesn't have a heart, it is not very thoughtful to take money out of health care for seniors. Similar to the lion, who has no courage, we don't have the courage to do what is right and work together in a bipartisan way. When you get to the end of the yellow brick road and you get to Oz, you find out there is nothing behind the curtain.

This isn't health care reform. We need to start over, and we need to get it right.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the remarks of my distinguished colleague from Florida. People need to listen to him. I am grateful to have him in the Senate, a fine man he is and a good example to all of us. I appreciate his remarks.

I rise to explain why I believe the Reid health care bill is not only bad policy for this country but also undermines the Constitution and the liberty it makes possible. I urge my colleagues to resist two errors that can distort our judgment and lead us down the wrong path. Those errors are assuming that the Constitution allows whatever we want to do and ignoring this question altogether.

We have only the powers the Constitution grants us because liberty requires limits on government power and we have our own responsibility to make sure we stay within those limits.

James Madison said that if men were angels, no government would be necessary, and if angels were to govern men, no limits on government would be necessary. Because neither men nor the governments they create are angelic, government and limits on government are both necessary to protect liberty—not just government but limits on government as well. Those limits come primarily from a written Constitution which delegates enumerated powers to the Federal Government.

Here is how the Supreme Court put it just a few years ago. This is in United States v. Morrison in 2000, quoting Marbury v. Madison—one of the most important decisions ever by the Supreme Court, probably the single most important decision—back in 1803:

> Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. ''The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written.''

The important word there happens to be ''limits.''

No one likes limits, least of all politicians with grand plans and aggressive agendas. It is tempting to ignore or forget the limits the Constitution imposes on us by pretending the Constitution means whatever we want it to mean. But we take an oath to support and defend the Constitution, not to make the Constitution support and defend us. The Constitution cannot limit government if government controls the Constitution.

In April 1992, during a debate on welfare reform legislation, the senior Senator from New York, Mr. Moynihan, with whom I served, made a point of order that an amendment offered by a Republican Senator was unconstitutional. Here is what Senator Moynihan said:

> We do not take an oath to balance the budget, and we do not take an oath to bring about universal peace, but we do take an oath to protect and defend the Constitution of the United States.

Applying that sage advice today, we do not take an oath to reform the health care system or to bring about universal insurance coverage, but we do take an oath to protect and defend the Constitution of the United States.

For the past 8 years, my friends on the other side of the aisle insisted that the Constitution sets definite and objective limits that the President must obey. The Constitution, they said, does not mean whatever the President wants it to mean. Compelling circumstances or even national crises, they said, cannot change the fact that the Constitution controls the President, not the other way around.

It is easy to insist that the Constitution controls another branch of government, that the Constitution does not mean whatever another branch of government wants it to mean. The real test of our commitment to liberty, however, is our willingness to point that same finger at ourselves.

I ask my colleagues, is the Constitution rock solid, unchanging, and supreme for the executive branch but malleable, shape-shifting, and in the eye of the beholder for the legislative branch?

A principle applied only to others is just politics, and politics alone cannot protect liberty. We must be willing to say that there are lines we may not cross, means we may not use, and steps we may not take.

The Constitution empowers Congress to do many things for the American people. Just as important, however, is that the Constitution also sets limits on our power. We cannot take the power without the limits.

I want to address several constitutional issues raised by this legislation.

The first is the requirement in section 1501 that individuals obtain not simply health insurance but a certain level of insurance. Failure to meet this requirement results in a financial penalty which is to be assessed and collected through the Internal Revenue Code.

We hear a lot about how Senators on this side of the aisle are supposedly defending the big, evil insurance companies, while those on the other side of the aisle are defenders of American families. This insurance mandate exposes such partisan hypocrisy.

Let me just ask you one simple question. Who would benefit the most from the unprecedented mandate to purchase insurance or face a penalty enforced by our friends at the Internal Revenue Service? The answer is simple. There are two clear winners under this Draconian policy and neither is the American family. The first winner is the Federal Government, which could easily use this authority to increase the penalty or impose similar ones to create new streams of revenue to fund more out-of-control spending. Second, the insurance companies are the most direct winners under this insurance mandate because it would force millions of Americans who would not otherwise do so to become their customers. I cannot think of a bigger

windfall for corporations than the Federal Government ordering Americans to buy their products.

Right now, States are responsible for determining the policies that best meet the particular demographic needs and challenges of their own residents. That is the States. Massachusetts, for example, has decided to implement a health insurance mandate, while Utah has decided not to do so. This bill would eliminate this State flexibility so that the Federal Government may impose yet another one-size-fits-all mandate on all 50 States and on every American. I cannot think of anything more at odds with the system of federalism that America's Founders established, a system designed to limit government and protect liberty.

I can understand why this mandate is so attractive to those who believe in an all-powerful Federal Government. After all, raising the percentage of those with health insurance is easy by simply ordering those without insurance to buy it. But while government may choose the ends, the Constitution determines the permissible means. That is why one of the basic principles is that Congress must identify at least one of our powers enumerated in the Constitution as the basis for any legislation we ultimately pass.

The health insurance mandate is separate from the penalty used to enforce it. The only enumerated power that can conceivably justify the mandate is the power to regulate interstate commerce. For more than a century, the Supreme Court treated this as meaning what it says. Congress cannot use its power to regulate commerce in order to regulate something that is not commerce. Congress cannot use its power to regulate interstate commerce in order to regulate intrastate commerce.

In classic judicial understatement, the Supreme Court has said that ''our understanding of the reach of the commerce clause . . . has evolved over time.'' Indeed, it has. Since the 1930s, the Supreme Court has expanded the power to regulate interstate commerce to include regulating activities that substantially affect interstate commerce. That is obviously far beyond, by orders of magnitude, what the commerce power was intended to mean, but that is where things stand today, and some say it justifies this health insurance mandate in this bill.

Using the Constitution or even the Supreme Court's revision of the Constitution as a guide requires more than a good intention fueled by an active imagination. The Supreme Court has certainly expanded the category of activities—get that word ''activities''—that Congress may regulate. But every one of its cases has involved Congress seeking to regulate just that: activities in which people have chosen to engage. Even the Supreme Court has never abandoned that category altogether and allowed Congress instead to require that individuals engage in activities, in this case by purchasing a particular good or service. The Court has never done that.

Let me mention just three of the Supreme Court's commerce clause cases. In its very first case, Gibbons v. Ogden in 1824, Thomas Gibbons had received a Federal license to operate a steamboat between New Jersey and New York and wanted to compete with Aaron Ogden, who had been granted a steamboat monopoly by New York State. In Wickard v. Filburn, Roscoe Filburn used the winter wheat he planted on his Ohio farm to feed his livestock and make bread for his own dinner table. In the winter of 1942, he grew more wheat than allowed under the Agricultural Adjustment Act and challenged the resulting fine. And in Hodel v. Surface Mining & Reclamation Association, companies challenged a Federal statute regulating surface coal mining.

These cases have two things in common. The Supreme Court upheld Federal authority in each case, but each case involved an activity—remember the word ''activity''—in which individuals chose to engage. There would have been no Gibbons v. Ogden if Thomas Gibbons had not chosen to operate a steamboat. Congress could regulate his activity but could not have required that he engage in it. There would have been no Wickard v. Filburn if Roscoe Filburn had not chosen to grow wheat. Congress could regulate his activity but not have required that he engage in it. And there would have been no Hodel case if companies had not chosen to mine coal. Congress could regulate their activity but could not have required that they engage in it.

The key word in the commerce clause is the word ''regulate,'' and the key word in every Supreme Court case about the commerce clause is the word ''activity.'' Regulating an activity in which individuals chose to engage is one thing; requiring that they engage in that activity is another.

The Congressional Budget Office examined the 1994 health care reform legislation which also included a mandate to purchase health insurance. Here is the CBO's, the Congressional Budget Office's, conclusion. This is August 1994, the Congressional Budget Office:

> A mandate requiring all individuals to purchase health insurance would be an unprecedented form of federal action. The government has never required people to buy a particular good or service. . . .Federal mandates typically apply to people as parties to economic transactions, rather than members of society.

That is pretty important language. In other words, Congress can regulate commercial activities in which people choose to engage but cannot require that they engage in those commercial activities.

Just a few months ago, as Congress once again is considering a health insurance mandate, the Congressional Research Service examined the same issue. Here is what the Congressional Research Service concluded. This was in July 2009. The CRS concluded:

> Whether such a requirement [to have health insurance] would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or service.

Can Congress use this clause to require an individual to purchase a good or service?

One thing did change in the legal landscape between 1994, when CBO called the health insurance mandate ''unprecedented,'' and 2009, when CRS called it ''novel.'' The Supreme Court twice found that there are limits to what Congress may do in the name of regulating interstate commerce.

In United States v. Lopez, the Court rejected a version of the commerce power that would make it hard ''to posit any activity by an individual that Congress is without power to regulate.''

If there is no difference between regulating and requiring what people do, if there is no difference between incentives and mandates, if Congress may require that individuals purchase a particular good or service, why did we even bother with the Cash for Clunkers Program? Why did we bother with TARP or other bailouts? We could simply require that Americans buy certain cars or appliances, invest in certain companies, or deposit their paychecks in certain banks. For that matter, we could attack the obesity problem by requiring Americans to buy fruits and vegetables and to eat only those.

Some say that because State governments may require drivers to buy car insurance, the Federal Government may require that everyone purchase health insurance. That is too simplistic, that argument. Simply stating that point should be enough to refute it. States may do many things that the Federal Government may not, and if you do not drive a car, you do not have to buy car insurance. This legislation would require individuals to have health insurance simply because they exist, even if they never see a doctor for the rest of their lives.

The defenders of this health insurance mandate must know that they are on shaky constitutional ground. The bill before us now includes findings which attempt to connect the mandate to the Constitution. I assume they are the best arguments that this unprecedented and novel mandate is constitutional.

Those findings fail in at least four ways.

First, the findings say that the requirement to purchase health insurance will add millions of new consumers to the health insurance market. I cannot dispute the observation that requiring more people to purchase health insurance will result in more people having health insurance. I think that seems quite self-evident. But the question is not the effect of the mandate but the authority for the mandate. Liberty requires that the ends cannot justify the means. The findings

also fail to establish that the insurance mandate is constitutional by failing to offer a single example—a single precedent, a single case—in which Congress has required individuals to purchase a particular good or service or the courts have upheld such a requirement. The cases I described are typical, and similar examples are legion. Every one involves—every one of those cases I have cited—the regulation of activity in which individuals choose to engage. Requiring that the individual engage in such activity is a difference not in degree but in kind.

The findings also fail to answer the question by observing that States such as Massachusetts have required that individuals purchase health insurance. As I noted regarding the example of car insurance, our Federal and State system allows States to do many things that the Federal Government may not. That is one of those limits on the Federal Government that is necessary to protect liberty.

The findings fail to answer the question by mistakenly focusing on whether Congress may regulate the sale of insurance. That misses the point in two respects. Simply because Congress may regulate the sale of health insurance does not mean that the Congress may require it. Simply because Congress may regulate the sale of health insurance does not mean that Congress may regulate the purchase of health insurance. This legislation requires you to believe that nonactivity is the same as activity; that choosing not to do something is the same as choosing to do it; that regulating what individuals do is the same as requiring them to do it. That notion makes no common sense, and it certainly makes no constitutional sense. If Congress can require individuals to spend their own money on a particular good or service simply because Congress thinks it is important, then the Constitution means whatever Congress says it means and there are and will be no limits to the Federal Government's power over each and every one of our lives.

That version of Federal power will be exactly what the Supreme Court in Lopez prohibited; namely, that there would be no activity by individuals that the Federal Government may not control. Neither the power to regulate interstate granted by the Constitution nor the power to regulate activities that substantially affect interstate commerce granted by the Supreme Court go that far. They don't go that far.

The American people agree. A national poll conducted last month found that 75 percent of Americans believe that requiring them to purchase health insurance is unconstitutional because Congress's power to regulate commerce does not include telling Americans what they must buy. By a margin of more than 7 to 1, Americans believe that elected officials should be more concerned with upholding the Constitution regardless of what might be popular than enacting legislation even if it is not constitutional.

Some defenders of this legislation such as the House majority leader have said that Congress may require individuals to purchase health insurance because it can pass legislation to promote the general welfare. The only thing necessary to dismiss this argument is to read the Constitution. Read the Constitution. That dismisses this argument. Just read it. Read the Constitution. Article I refers to general welfare as a purpose, not as a power. It is a purpose that limits rather than expands Congress's power to tax and to spend. The requirement that individuals purchase health insurance is not an exercise of either the power to tax or the power to spend, and so even the purpose of general welfare is not connected to it at all. Needless to say, it makes no sense to include in a written Constitution designed to limit Federal Government power an open-ended, catchall provision empowering Congress to do anything it thinks serves the general welfare.

If America's Founders wanted to create a Federal Government with that much power, they could have written a much shorter Constitution, one that simply told Congress to go for it and legislate well. That is what they could have done. They didn't do that, thank goodness.

The Heritage Foundation has just published an important paper arguing that this health insurance mandate is both unprecedented and unconstitutional. It is authored by Professor Randy Barnett, the Cormack Waterhouse Professor of Legal Theory at the George Washington Law Center; Nathaniel Stewart, an attorney with the prestigious law firm of White & Case, and Todd Gaziano, Director of the Center for Judicial and Legal Studies at the Heritage Foundation.

I ask unanimous consent to have the conclusion portion of the Legal Memorandum published by the Heritage Foundation printed in the RECORD.

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

CONCLUSION

In theory, the proposed mandate for individuals to purchase health insurance could be severed from the rest of the 2,000–plus-page ''reform'' bill. The legislation's key sponsors, however, have made it clear that the mandate is an integral, indeed ''essential,'' part of the bill. After all, the revenues paid by conscripted citizens to the insurance companies are needed to compensate for the increased costs imposed upon these companies and the health care industry by the myriad regulations of this bill.

The very reason why an unpopular health insurance mandate has been included in these bills shows why, if it is held unconstitutional, the remainder of the scheme will prove politically and economically disastrous. Members need only recall how the Supreme Court's decision in Buckley v. Valeo—which invalidated caps on campaign spending as unconstitutional, while leaving the rest of the scheme intact—has created 30 plus years of incoherent and pernicious regulations of campaign financing and the need for repeated ''reforms.'' Only this time, the public is aligned against a scheme that will require repeated unpopular votes, especially to raise taxes to compensate for the absence of the health insurance mandate.

These political considerations are beyond the scope of this paper, and the expertise of its authors. But Senators and Representatives need to know that, despite what they have been told, the health insurance mandate is highly vulnerable to challenge because it is, in truth, unconstitutional. And political considerations aside, each legislator owes a duty to uphold the Constitution.

Mr. HATCH. I also wish to share with my colleagues a letter I received from Dr. Michael Adams and attorney Carroll Robinson. They are on the faculty of the Barbara Jordan Mickey Leeland School of Public Affairs at Texas Southern University. Mr. Robinson, a former member of the Houston City Council, was named by the Democratic Leadership Council in 2000 to its list of ''100 to Watch.''

I ask unanimous consent their entire letter, which is dated October 25, 2009, be printed in the RECORD following my remarks.

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

(See exhibit 1.)

Mr. HATCH. Let me share just an excerpt from these two people. This is an excerpt from Michael Adams, Ph.D., and Carroll G. Robinson, Esquire, from the Barbara Jordan and Mickey Leland School of Public Affairs, Texas Southern University:

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

That is pretty impressive stuff.

It is certainly possible to achieve the goal of greater health insurance coverage by constitutional means, not unconstitutional means. I am quite certain, however, that those means are politically impossible.

Liberty requires that the Constitution trump politics, but in the legislation before us, politics trumps the Constitution.

Another provision in this legislation that is inconsistent with the Constitution is section 9001, which imposes an excise tax on high-cost employer-sponsored insurance plans differently in some States than in others. The legislation imposes a tax equal to 40 percent of benefits above a prescribed limit but raises that limit in 17 States to be determined by the Secretaries of the Treasury and Health and Human Services.

My colleague from Ohio, Senator BROWN, spoke against this provision on policy grounds earlier.

The Constitution allows Congress to impose excise taxes but requires that

they be ''uniform throughout the United States.'' This is one of those provisions that will be dismissed with pejorative labels such as archaic by those who find it annoying. But it is right there in the same Constitution that we have all sworn to uphold. We have all sworn that same oath to protect and defend, and we are just as bound today to obey it.

Frankly, a good test of our commitment to the Constitution is when we must obey a provision that limits what we want to do.

The Supreme Court has had relatively few opportunities to interpret and apply the uniformity clause, but its cases do provide some basic principles which I think easily apply to the legislation before us today. The Court has held, for example, that a Federal excise tax must be applied ''with the same force and effect in every place where the subject of it is found.''

The Congress has wide latitude in determining what to tax and may tailor a regional solution to a geographically isolated problem, but laws drawn explicitly in terms of State lines will receive heightened scrutiny. By the plain terms of the legislation before us, insurance plans providing a certain level of benefits in one State will be taxed while the very same plans providing the very same benefits in another will not be taxed. We do not yet know what States will be treated differently, but we do know, according to this bill, that 17 of them will. That actually makes the constitutional point more clearly by identifying the State-based discrimination more starkly. Congress may decide to tax insurance plans with benefits that exceed a particular limit, but the tax must have the same force and effect wherever that subject of the tax is found. That is the clear meaning of the constitutional provision and the clear holding of the Supreme Court's precedents. Taxing the same insurance plans differently in one State than in another is the opposite of taxing them uniformly throughout the United States.

I commend to my colleagues the work of Professor Thomas Colby of the George Washington University Law School, whose comprehensive work on the uniformity clause was published in volume 91 of the Virginia Law Review.

I asked the Congressional Research Service to look at this uniformity clause issue. Its report confirmed that this differential tax on high-cost insurance plans is drawn explicitly along State lines and that a court will more closely scrutinize the reasons for the State-based distinction. It also concluded that Congress has not articulated any justification for singling out certain States for different treatment. I have raised this issue over and over throughout the process of developing and considering this legislation. I serve on both of the Senate committees that are involved in this process. In fact, I can say I have served on three: not only the HELP Committee—the Health, Education, Labor and Pensions Committee—but also the Finance Committee, as well as the Judiciary Committee that, for some reason, has some great interest in the Constitution. I have never heard any justification for singling out certain States for different tax treatment.

The attitude seems to be that this is what the majority wants to do, so they are going to do it no matter what the Constitution says. That may be politically possible, but that does not make it constitutionally permissible.

Other legal analysts and scholars who are examining this health care takeover legislation are raising additional constitutional objections. Professor Richard Epstein of the University of Chicago School of Law, for example, focuses on provisions that restrict insurance providers' ability to make their own risk-adjusted decisions about coverage and premiums. He argues these restrictions amount to a taking of private property without just compensation and in violation of the fifth amendment.

Others have observed that the legislation requires States to establish health benefit exchanges. It does not ask, cajole, encourage, or even bribe them. It simply orders State legislatures to pass legislation creating these health benefit exchanges and says if States do not do so, the Secretary of Health and Human Services will establish the exchanges for them. How thoughtful.

But as the Supreme Court said in FERC v. Mississippi in 1982:

> This Court never has sanctioned explicitly a federal command to the States to promulgate and enforce laws and regulations.

The Supreme Court reaffirmed a decade later in New York v. United States that ''the Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.''

In that case, the Court struck down Federal legislation that would press State officials into administering a Federal program.

More recently, in Printz v. United States, the Supreme Court stated:

> We have held, however, that State legislatures are not subject to Federal direction.

Yet this legislation does what these cases said Congress may not do. It commands States to pass laws, it regulates States in their capacity as States, and it attempts to make States subject to Federal direction.

Let me return to the principles with which I began. Liberty requires limits on government power. Those limits come primarily from a written Constitution which delegates enumerated powers to Congress. We must be able to identify at least one of those enumerated powers to justify legislation, and those powers should not mean whatever we, in our delightful wisdom, want them to mean.

Those principles lead me to conclude that Congress does not have the authority to require that individuals purchase health insurance, and that Congress cannot tax certain health insurance plans in some States but not in others.

These, and the others I have mentioned, are only some of the constitutional issues raised by this legislation. Any of these, and others I have not mentioned, could well be the basis for future litigation challenging this legislation should it become law.

Writing for the Supreme Court in 1991, Justice Sandra Day O'Connor reminded us:

> The Constitution created a Federal Government of limited powers.

America's Founders, she wrote, limited Federal Government power to ''protect our fundamental liberties.''

Here is the way Justice O'Connor put it, writing for the Supreme Court in New York v. United States in 1992:

> But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location, as an expedient solution to the crisis of the day.

That is a pretty remarkable statement. I could not have said it better myself. Those are either principles we must obey or cliches we may ignore.

If the Constitution means anything anymore, if it does what it was created to do by not only empowering but, more importantly, limiting government power, then now is the time to stand on principle rather than to slip on politics.

I yield the floor.

EXHIBIT 1

OCTOBER 25, 2009.

Hon. ORRIN G. HATCH,
*U.S. Senator*.

DEAR SENATOR HATCH: We support reducing the cost of health insurance and expanding access to quality, affordable prevention, wellness and health care services for all Americans. Despite our support for health care reform that empowers consumers, we have serious concerns about the constitutionality of the individual mandate requirement being proposed by Congress.

At least one scholar has argued that the individual mandate requirement is constitutional because Congress has unlimited authority under the Commerce Clause to regulate the economic activity of individual American citizens no matter how infinitesimal.

We do not agree with that position. In Philadelphia, the Framers established a federal government of limited powers. If Congress has unlimited power under the Commerce Clause to regulate the economic activity of citizens, then the Constitution is no longer (and never was) ''a promise . . . that there is a realm of personal liberty which the government may not enter.''

We believe that this promise still exists and is not a mirage. The Supreme Court said so, at least as recently as 2003.

It has also been argued that the individual mandate is constitutional because citizens have ''no fundamental right to be uninsured'' or ''to decline insurance.'' These are strawman characterizations intended to distract attention from the real constitutional question: Does Congress have the power to mandate citizens buy a specific good or service or be subjected to a financial penalty for not doing so?

Our reading of the Constitution and Supreme Court precedent could not identify any reasonable basis, expressed or implied, for granting Congress the broad, sweeping and unprecedented power that is represented by the individual mandate requirement. In fact, we could not find any court decision, state or federal, that said or implied that the Constitution gave Congress the power to mandate citizens buy a particular good or service or be subject to a financial penalty levied by the government for not doing so.

There are cases that say Congress can tell consumers what products to buy if they choose to buy, but no cases that say Congress can mandate that a citizen must buy a particular good or service or be fined for not doing so.

The individual mandate requirement directly burdens the fundamental meaning of being an American citizen as embodied in the Ninth Amendment reaching back through the Declaration of Independence to the Magna Carta and its expansion coming forward from the 3/5ths Clause of Article I of the Constitution and the Court's Dred Scott decision to the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-Fourth and Twenty-Sixth Amendments as well as through Supreme Court decisions related to these amendments, legislation adopted pursuant to them, the Bill of Rights and its penumbra.

The Supreme Court has ruled that freedom of speech, expression and association are constitutionally protected. Our right to freely move around the country is also constitutionally protected. Congress can regulate the size of political donations but has no authority to tell a citizen which political candidate or party they can lawfully contribute to.

Like political donations, how a citizen legally spends their money in the market place is clearly a form of expression and association that requires strict scrutiny, or heightened, protection.

Calling the individual mandate a tax raises another constitutional concern. Under the mandate, American citizens are essentially subject to a financial penalty simply for being a citizen of the United States residing in a state of the Union. It is essentially an existence fee, a fee for existing.

Under the Fourteenth Amendment, the definition of citizenship does not include any requirement that Americans pay a ''tax'' simply because we are citizens. In fact, the Twenty-Fourth Amendment and related Supreme Court decisions expressly prohibit financially burdening the rights of citizens to prevent them from exercising a right of citizenship. Citizens have a liberty interest in deciding when to buy a good or service and which to buy form the legally available options.

The Supreme Court has said, ''Had those who drew and ratified the Due Process Clauses of the Fifth Amendment or the Fourteenth Amendment known the components of liberty in its manifold possibilities, they might have been more specific. They did not presume to have this insight. They knew times can blind us to certain truths and . . . laws once thought necessary and proper in fact serve only to oppress. As the Constitution endures, persons in every generation can invoke its principles in their own search for greater freedom.''

We believe that reducing the cost of health care insurance and expanding coverage can be achieved without opening the constitutional Pandora's Box of the individual mandate requirement.

Sincerely,

CARROLL G. ROBINSON, Esq.
MICHAEL O. ADAMS, PhD.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I am delighted to follow my colleague from Utah. I am pleased he has raised these constitutional issues, which I think are significant to this bill. The idea that we could have a constitutional mandate to buy health insurance, to me, is highly questionable under our rights under the role of the Federal Government and under the Constitution. Senator HATCH has been on the Judiciary Committee for many years and he understands these issues very well.

We are now on our sixth iteration of the health care reform bill. This one talks about expanding Medicare, basically as one of the key components of solving the problem. Here is a quote from the Mayo Clinic I found, and others have also been cited. I found this interesting, succinct, and accurate:

Any plan to expand Medicare, which is the Government's largest public plan, beyond its current scope does not solve the Nation's health care crisis, but compounds it. It is also clear that an expansion of the price control of the Medicare payment system will not control overall Medicare spending or curb costs. This scenario follows the typical pattern for price control, reduced access, compromised quality, and increasing costs anyway. We need to address these problems, not perpetuate them through health reform legislation.

That was the Mayo Clinic. It is clearly not the way to go to solve the crisis or the problems. It probably hastens the day Medicare goes bankrupt, which is set to happen in 2017, 7 years away.

I want to talk about the possibility that this health care bill puts this very early piece of economic recovery that we are having at risk. The latest reports on unemployment provide some hope that our battered economy may be showing some tentative signs of economic recovery, as the job loss continues to slow. Most of this is based off of monetary policy. We are seeing some of this taking place.

Consumer confidence is still low. Unemployment hovers at 10 percent, and over 7 million jobs were lost since the beginning of the recession.

It should be clear that any potential recovery is incredibly fragile. That being the case, Congress and the administration should focus like a laser beam on policies that encourage economic growth and put Americans back to work. That seems to be obvious.

Instead, though, the administration and the Democratic-controlled Congress have taken up crucial months with a proposed revamping of our entire health care system that will cost nearly $2.5 trillion over the next 10 years, to be paid for by new taxes and employer mandates, and it will impose a grave risk to a sustained rebound of our Nation's economy. This hurts our economic recovery.

Not only that, but the Democratic health care bill includes some positively perverse incentives that would discourage hiring, work, saving, and even marriage. Again, it would discourage hiring, work, savings, and marriage. Higher taxes, more employer mandates, and disincentives to job creation, productivity, and family formation are hardly the prescription for the growth our economy so desperately needs right now.

Both the House and the Senate bills would, for instance, increase the already existing penalty on work faced by many low-income families who receive tax and in-kind benefits from government welfare programs. We already heard this. Health insurance subsidies in the legislation for individuals and families in poverty would tack on an additional 12 to 20 percent to marginal tax rates, which already approach 40 to 50 percent for families receiving a variety of benefits for those with low incomes. This would result in marginal tax rates of 50 to 60 percent for most affected families.

If working more hours or obtaining better paying jobs results in more than half of those additional earnings being taken away as a result of taxes or a reduction in benefits—if you are a low-income individual, you are working more, you are getting more money coming in, but your benefits from the government are reduced. So if you are taking 50 to 60 percent away in a reduction of benefits or in taxes, the incentive to work harder or to invest in an education is greatly reduced. That is obvious on its face. Yet it is in this bill.

This is not the only work disincentive in the bill. It is common for teenagers and college students to obtain jobs so they can have some spending money on their own or to help with their educational expenses. The Senate bill penalizes the families of these younger workers by including their wages in benefit eligibility calculations. For many low-to-moderate income families, the inclusion of their wages could mean a significant increase in their cost of health insurance or even in them losing thousands of dollars of health insurance subsidies altogether. That is in the bill.

And more harmful to the economy, potentially, are the incentives directed at employers. Both the House and Senate bills include temporary subsidies to small businesses to encourage them to offer employer-sponsored health insurance. As the number of employees increase or as salaries increase, the amount of the credit provided to the business decreases. The structure of this subsidy not only discourages employers from hiring new employees, but it also discourages them from increasing employees' salaries. We don't want those sorts of disincentives in any bill.

Ironically, the incentives in the bill would even work to encourage employers to drop health insurance coverage for individual employees or eliminate insurance coverage altogether. The Senate bill would cap employee contributions to insurance premiums at 9.8 percent of their income. If an employer

offered a policy that required employees to pay more than this, the employee would be eligible to purchase insurance through the new ''health care exchanges.'' The employer would have to pay a fine. Since, in many cases, that fine is considerably less than the additional insurance costs the employer would incur if they retained coverage, many businesses concerned about the bottom line would be enticed by the bill to stop providing any health insurance coverage. So they are actually enticed here to drop health insurance coverage—another thing we don't want to see happen.

Furthermore, employers who offer flexible spending accounts or FSAs will be encouraged to stop providing these tax-free medical spending accounts for their employees. Under the Senate Democrats' bill, FSA contributions will be included in the total cost of employees' health insurance benefits for the purpose of calculating the proposed tax on high-cost health plans—the so-called Cadillac health care plans. Adding an FSA contribution could push the total cost of health benefits above the high-cost threshold for many workers, which will result in the employer being liable for a portion of the 40 percent high-cost plan's tax. As more and more plans become subject to the high-cost plan's tax, it will be in the employer's best interest to eliminate FSA offerings altogether. That is another disincentive we don't want to see happening.

The proposed legislation would also create new marriage penalties across the income spectrum. We have been working for some years to do away with the marriage penalty. Marriage is a good and solid institution that helps so much in this Nation. Yet it puts in a marriage penalty, penalizes people for getting married; it is built into this legislation. These penalties can be so large that, in some cases, couples would have to forgo marriage in order to avoid thousands of dollars in new taxes. The penalties are significant. Low- and moderate-income families often have limited savings as well. Given the already significant marriage penalties in low-income benefit programs, it seems ironic that the government would create yet another program that penalizes low-income individuals for getting married.

Currently, if they are on public assistance and they get married, their combined incomes often move a couple out of the support they receive for their families, whether it is health support, housing, or food support. By getting married, they often lose their benefits. Instead of taking them away, we ought to be helping them form solid families. That sort of disincentive is built into this health insurance plan as well, where you actually put in disincentives for low-income couples to get married. In other words, to be able to get the health insurance subsidy, they may have to forgo marriage. That is not the sort of incentive we want in the system and in the bill. We are trying to take it away in the welfare programs, but to add another piece to low and moderate-income couples is the wrong way for us to go.

That the Democratic health care legislation would set the United States on a path to a single-payer government-run health insurance system of the sort found in Europe and Canada is bad enough, but even more troubling is the fact that these proposals would create a series of perverse incentives ultimately harmful to workers, businesses, and the entire economy. The Senate must reject this poorly conceived, ruinously expensive scheme and get back to the business of helping our economy recover.

I have talked to many people across the United States and particularly in Kansas, many people who are deeply concerned about this economy and the perverse things coming out of Washington. While they might start considering investing in their small business, putting some income or something out to be able to grow and create jobs, people are holding back and saying: I don't know how many more taxes you will put on us or what the health insurance plan will look like. I don't know what cap and trade will do on raising energy costs.

They are holding back. These perverse economic signals, and the discussion of them in Washington, is perversely affecting the economy. It is hurting the economic recovery. If you put these pieces into place statutorily, you are hurting savings, hurting hiring, hurting marriage formation, and you will further hurt an already very tentative recovery from taking place.

This is a bad medicine for the economy. The idea that you would expand Medicare to take care of that is a terrible idea. You will be hurting a program that already is not financially solvent in the long term and is looking at something like $30 trillion of unfunded obligations already on its books. That alone, if you expand it back to age 55, plus the provider community—the American Medical Association and the American Hospital Association are opposed to this expansion of Medicare. They don't get full reimbursement of costs right now. With the talk about bringing it back to age 55, you will be sweeping a large number of people into Medicare, so you are sweeping in a lot of people who are already in private insurance plans. When they are pulled out of private insurance which pays at the full rate to the provider community, you are taking those resources away from the provider community, from doctors and hospitals. That is why you are seeing the American Medical Association and the American Hospital Association come out against this proposal on Medicare expansion. How on Earth would it ever be paid for, when the program is already not on a stable financial track?

The Federation of American Hospitals stated this:

> The FAH is strongly opposed to this proposal. A Medicare buy-in would involve Medicare rates, would be controlled by CMS, and would crowd out older workers with private coverage and may choose early retirement as a result. Such a policy will further negatively impact hospitals.

In my rural State, in particular, it would have a huge negative impact on a number of the hospitals in my State.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, is there a unanimous consent order of business?

The PRESIDING OFFICER. There is not.

Mr. DURBIN. Mr. President, I rise to speak as in morning business.

I would like to say at the outset I respect very much my colleague from the State of Kansas. He and I have worked on many issues together. In fact, we traveled together to Africa, a memorable trip for both of us, I am sure, visiting the Democratic Republic of Congo, Rwanda, and meeting a lot of people in desperate straits. I thank him for that.

I know he is now preparing for another public career in the State of Kansas, with the blessing of the Kansas voters. But in the meantime, he continues to be a very important, vital voice in the Senate. I thank him for that as well.

We do disagree on health care reform. I know he has had a chance to explain his point of view. I will say I disagree with many of his conclusions about what we are about, what we are trying to accomplish.

This is the bill that is before us when we return to the health care reform debate. It is 2,074 pages long. It is the product of 1 year's work by two major committees in the Senate. The House of Representatives spent a similar period of time in three different committees working on it to come up with their work product, which they passed just a few weeks ago.

This is historic because we have been promising this and threatening this and talking about this for decades. It was Theodore Roosevelt who first raised the question about whether America could accept the challenge of providing health care for every citizen. That was over 100 years ago. Then, of course, Harry Truman, who, in a more modern era, issued the same challenge. He was confronted by his critics who said: He is talking about socializing medicine. Must be socialism that Harry Truman is proposing. The idea died.

Then, again, Lyndon Johnson raised it in the early 1960s. He was a master of the Senate, as he has been characterized in a book that has been written about him. He believed he had the power to make this happen to deal with the health care system across the board in America. It turned out he made a significant contribution with the enactment of Medicare and Medicaid but could not reach the goal of universal health care or comprehensive health care reform.

This President, President Obama, came to us and issued the same challenge. He said we have reached a point of no return. The current health care system in America is unsustainable, it is unaffordable, and the cost of health care goes up dramatically. Ten years ago, a family of four paid an average of $6,000 a year, $500 a month for health care insurance. Now that is up to twice that amount, $12,000 average for a family of four, $1,000 a month. In 8 years, with projected increases in costs, we expect that the monthly premium for the family of four to go up to $2,000 a month, $24,000 a year. We know that represents 40 percent of earnings for many people. That is absolutely unsustainable.

What we have tried to do, first and foremost, is address affordability. How can we make health insurance protection more affordable for more families? How can we start lessening the annual increase in premiums and actually help people by substantially cutting the cost of premiums for many families? It is a big challenge, and we have, I think, risen to the challenge with this bill.

The other side of the aisle has ideas, they have amendments, they have speeches, they have charts, but they do not have a comprehensive health care reform bill. They do not have a bill that has been sent over to the Congressional Budget Office, carefully read, and evaluated. It took weeks to do it. They do not have a bill that came back from the Congressional Budget Office, considered to be the neutral observer of action on Capitol Hill. They do not have a bill that came back from the CBO that has been characterized as actually reducing the deficit.

This bill, according to the Congressional Budget Office, will reduce America's deficit over the next 10 years by $130 billion and over the following 10 years another $650 billion. It is not just dealing with health care reform; it is dealing with the costs of health care to our government and reducing our expenditures by significant amounts. It is the largest deficit-reduction bill ever considered on the floor of the Senate.

Although the Republicans have many ideas, they do not have anything that matches this bill in terms of deficit reduction or bringing down the cost of health care. They have not produced a bill which will extend the reach of health insurance coverage to 94 percent of our people in this country, which this bill does.

For the first time in the history of the United States of America, 94 percent of our American citizens will have peace of mind knowing they have health insurance. Today, 50 million do not. This bill will take 30 million off the uninsured rolls and put them in insurance plans that can protect their families, and it will help them pay for the premiums. If people are making less than 400 percent of poverty—which in layman's terms is about $80,000 a year in income. If your family makes $80,000 or less, we provide in this bill that we will help you pay for your premiums. The lower your income, the more we will help pay.

If you are making, for example, as an individual, less than $14,000 a year, you will not pay for your health care. It will be covered by Medicaid, the program that is now nationwide, and you will not have to pay a premium. Then as you make more money, you will pay a little bit of a premium with help from this bill.

The Republicans have not produced a plan of any kind that deals with helping families of limited means, modest means, pay for their health insurance premiums. We have. The Congressional Budget Office has scored it. One of the major provisions in this bill—and one I think most people will identify with quickly—is the fact that health insurance reform is included too. There is a Patients' Bill of Rights in this bill. It basically says we should bring an end to the discriminatory practices of health insurance companies against American citizens. We know what we are talking about.

Friends of mine, a family I am closer to than any other family in Springfield, IL, has a son fighting cancer. He is a young man in his forties. He has young children in high school. He was diagnosed with melanoma just a few years ago. His oncologist has worked with him with chemotherapy and radiation and with the kind of treatment and drugs and surgeries he needed. As a result of it, he has gone through some tough surgeries and tough treatment. His oncologist said at one point: We have a drug we believe will help you. He gave him the drug, and the drug, in fact, arrested the development of his cancer.

Shortly after the drug was prescribed and administered, his health insurance company that he paid into for years came back and said: We will not cover that drug. The drug costs $12,000 a month. It is impossible for him, as the coach of a baseball team at one of our universities, to come up with that kind of money. His family borrowed money to pay for one of the treatments, and now they are suing the insurance company in the hopes that they can get coverage.

After all those years paying in, when they finally needed that coverage, they turned him down. I hope he wins that lawsuit. This is a very profitable insurance company. It is a company that should be paying, but they are not. That is one example of thousands we could talk about.

The purpose of this bill is to make sure a friend of mine, his family, and other families just like his have a fighting chance against these insurance companies. We say in this bill we are going to provide a way for protection for people with a preexisting condition; that if you have a history of high cholesterol or high blood pressure, if you have some cancer in your family, it is not going to disqualify you. You are still going to be eligible for health insurance, a policy you can afford.

We also say, when it comes to your children—you know how it is today, you learn the hard way—when your kids who are on the family plan reach the age of 24, they are off. We extend that to age 26, which I think is a little more peace of mind, particularly for students graduating from college looking for jobs these days. It is not easy. We want to make sure they are covered with health insurance while they are paying off their student loans and building their career. That is in this bill.

There is not a bill from the Republican side of the aisle that deals with the Patients' Bill of Rights. In fact, it is a rare Senator on the other side of the aisle who even stands and is critical of health insurance companies in the way they are treating people in this country.

I do not know if my friends on the other side of the aisle get back home enough to meet with some of these families. Surely they do. They must receive mail that tells them about these stories we have all heard about. You would think they would be endorsing our approach in this bill. Instead, they are critical of it from start to finish.

They talk a lot about taxes. I want you to know, under this bill, if you have a small business with 25 or fewer employees, we actually provide tax breaks to help you provide insurance for your employees. There are a lot of businesses, mom-and-pop businesses, for example, that cannot afford health insurance that will have a chance now because of tax breaks here.

Then, when it comes to paying for premiums, I mentioned earlier, if you make $80,000 or less, we provide tax breaks in helping you pay for it. The cost of it in tax breaks is $440 billion over 10 years. It is a huge amount of money we are providing to American citizens to give them a chance to pay for their health insurance premiums. All we hear from the other side is: Oh, this bill is going to raise taxes. It does raise some. It raises taxes on health insurance companies for what we call Cadillac health care policies.

We can debate for a long time whether that level of policy, $25,000, is a reasonable level or should be something different. But the fact is, it is a tax on the health insurance company. It will likely result in fewer policies that are that grand and that expansive being issued.

I think this is a bill that moves in the right direction. It is a bill that makes insurance more affordable. It is a bill that does not increase the deficit, it reduces it. It is a bill that gives people a fighting chance against health insurance companies that discriminate against their customers. It is a bill that extends the coverage of health insurance of 94 percent of Americans. It is a bill that looks at putting Medicare on sound footing. It adds 5 years of solvency to Medicare—5 years. There has not been a bill produced on the other side of the aisle that even adds 1 year,

that I am aware of. It adds 5 more years of solvency. That is the reason why this bill has been supported by the American Association of Retired Persons. We have support of medical professionals, senior organizations, and consumer groups all across America. They know, as we do, we cannot wait any longer.

I also wish to make the point that the Senate bill offers significant savings for seniors. The CMS Actuary projects a net $469 billion in Medicare and Medicaid savings over 10 years, slightly more than the Congressional Budget Office. It extends the life of the Medicare trust fund, according to the Office of the Actuary, by 9 years. That is longer than anyone has projected in previous forecasts, but it is a significant increase, almost doubling the life of the Medicare trust fund over what it currently would be.

It reduces premiums by $12.50 a month by the year 2019 or $300 per couple per year. Slowing Medicare growth will lower health care costs for seniors as well as younger Americans. Not only will there be a premium savings, but coinsurance will fall as well.

The Senate bill slows the growth of health care costs. The Actuary report we have, for example, says, '' . . . Reductions in Medicare payment updates for providers, the actions of the Independent Medicare Advisory Board, and the excise tax on high-cost employer-sponsored health insurance would have a significant downward impact on future health care cost growth rates.''

The bend in the health care cost curve is evident. Health care costs under the Senate bill begin to decline as cost savings begin to kick in.

I have not mentioned this bill focuses on prevention and wellness too. If there is one thing we need, it is to encourage people to take care of themselves and to get a helping hand for the tests they need to stay healthy and to monitor their conditions. This preventive care and wellness, though we have not been credited by the Congressional Budget Office, is an important element of this bill.

I think there is one thing on which we should all agree. The cost of health care, particularly for small businesses, is very difficult. On the Senate floor, both Democrats and my friends on the other side of the aisle have recognized small businesses are struggling to pay for health insurance. But there is a real difference. We have offered a solution, one that is comprehensive and one that has been scored and carefully analyzed by the Congressional Budget Office.

Unfortunately, that has not happened on the other side. Their approach is basically to criticize what we have proposed but to offer no alternative. If they are happy with the current system, I understand that. If they will concede that it is hard to produce a bill like this, I would understand that. But merely to criticize this without alternative, a comprehensive alternative that has been carefully analyzed, I don't think is a responsible approach to the serious problem that we face today.

There are real-life stories of people who have contacted me. One of them I will tell you about involves a small business. Right now we know that one sick employee of a small business can drive the cost of health care for the whole company to limits where they just can't afford it. My friends, Martha and Harry Burrows, whom I have met, are small business owners in Chicago, and they have to wrestle with this problem and try to run a successful business at the same time. When they opened their toy store, Timeless Toys, 16 years ago, they promised to provide health insurance to their full-time employees. Martha Burrows said:

> Since we were covered, we wanted to offer the same benefit to our employees.

But as their health care premiums have skyrocketed with leaps of more than 20 percent at a time, the commitment has taken its toll on their business. Providing health insurance to their full-time staff of seven meant cuts not only to profits but also to the wages of their employees. In general, the older employees faced even higher costs. We shouldn't put our Nation's employers in a position where the health costs of an older worker can make such a huge difference.

Marcia says:

> I don't like making decisions that way. I want to base hiring decisions on the quality of the person.

The legislation on the floor, incidentally, deals with the rating of premium costs for senior citizens, for example, and makes a fairer rating system. Currently, health insurance companies in America are exempt from the antitrust laws. Under a bill known as McCarran-Ferguson, passed in the 1940s, they are exempt, along with organized baseball, which means the insurance companies—health insurance companies and others—can literally sit down in a room and conspire, collude, agree on prices they are going to charge. If any other companies that were supposed to be competing did that in America they would be sued but not the insurance companies. So they can set premiums and agree on what the premiums will be, and they can divide up the market for the sale of their products, sending some companies to one town and some to another, making sure they do not compete against one another.

That is the reality of health insurance today. What we provide in this bill is protection against the ratings which discriminate against people because they are elderly or because they are women. We put limits to the rating differences that will be allowed in health insurance policies. There is no bill I know of from the Republican side that even considers or addresses that problem.

Mr. President, one of the issues that I have tried to focus on in the midst of this recession is our foreclosure crisis. Back in December of 2006, when the housing markets were humming along and the bankers and brokers were raking in money, the Center for Responsible Lending published a report called ''Losing Ground.'' That report, in December of 2006, estimated that nearly 2 million homes would be lost to foreclosure in the coming years due largely to shoddy subprime mortgages.

Here is what the Mortgage Bankers Association told the Washington Post when they heard of this study. It was authored by the Center for Responsible Lending.

> The report is 'wildly pessimistic' because most homeowners have prime loans and are not at financial risk.

That is what a senior economist at the Mortgage Bankers Association said in December of 2006. He went on to say:

> The subprime market is a small part of the overall market. Lending industry officials have said that regulatory action could injure the subprime market.

When he speaks of regulatory action, he means regulating these subprime markets.

On the floor of the Senate, I was involved in a debate with a Senator from Texas named Phil Gramm. I offered an amendment to a bankruptcy bill which Senator GRASSLEY and I worked on which said: If you are guilty of predatory lending, you will be precluded in bankruptcy from pursuing your claim. That was debated on the Senate floor, and debating on the other side against my amendment was Senator Phil Gramm of Texas, who said on the floor of the Senate:

> If the Durbin amendment passes, it will destroy the subprime mortgage market.

Well, my amendment failed by one vote, and the subprime mortgage market continued until it collapsed just a couple of years ago. I wish I had had another vote for my amendment.

At the time this debate took place in December of 2006, about 25 percent of home loans were subprime. So the mortgage bankers, unfortunately, misled the public about the state of the market at the time to wave away warnings about any crisis that might be following, and we all know what that has meant to this country.

I go back to that episode now because 3 years later, in 2009, we have had more than 2 million foreclosures, something the Mortgage Bankers Association said wouldn't happen. In fact, the Mortgage Bankers Association has recently announced that in the third quarter of this year, nearly one in seven families paying mortgages in this country were either behind on their payments or already in foreclosure—one out of seven people holding mortgages today. It is hard to imagine. That is the highest it has ever been.

The statement from the Mortgage Bankers Association said:

> Despite the recession ending in mid-summer, the decline in mortgage performance continues.

Three years ago, the rosy scenario they painted has now morphed into a

much more serious situation which they cannot ignore. I have been talking about this foreclosure crisis since early in 2007. I stand here with some regret and say it is getting worse.

In Illinois, foreclosure filings in the six-county region around Chicago went up 67 percent in the last quarter. This isn't just a problem for the city of Chicago. New filings in Cook County, mainly suburban areas, were down 4.6 percent last quarter. The problem, unfortunately, has migrated to the suburbs. All of the so-called ''collar counties'' around Chicago have experienced massive increases in foreclosure activity. Kane County, a near-in county to the city of Chicago, saw foreclosure filings increase 97 percent in the last quarter over a comparable period last year.

I know the administration is working on this. The Home Affordable Modification Program is helping some families. I know Treasury has stepped up naming and shaming and hoping that it will provide more data for the public on which banks are actually trying. Some are—not much but some are. Many are not trying at all to renegotiate mortgages for people facing foreclosure. But no matter how much the Treasury Department leans on these bankers, the big banks that service most of these troubled mortgages have simply not stepped up to the plate.

Treasury reported yesterday that 3.3 million families are eligible for the Home Affordable Modification Program. Those are the families who are at least 2 months behind on their mortgages and in serious risk of being thrown out in the street. How many families, based on this 3.3 million families eligible for this program, have been able to get a bank to commit to a permanent loan modification that will keep them in their homes? There were 31,000 out of 3.3 million; less than one-tenth of 1 percent of the families in trouble have been able to work out a permanent solution with their bankers. That is disgraceful.

The big banks that created this mess continue to stand in the way of cleaning it up. They are making billions of dollars while foreclosing on millions of American families. Shaming the banks with speeches on the floor of the Senate isn't going to work. We have learned the hard way that many banks are beyond embarrassment. You can't embarrass bankers who take billions of taxpayer dollars to stay solvent and to overcome their bad banking policies, then turn around and pay millions out in bonuses to the officers of the same banks. You can't publicly shame bankers into doing something when they simply don't care.

But let's be clear. Congress hasn't done its part either. We have not done enough to make these banks help the American people who need some help. I will continue to come to the floor to remind my colleagues that we must address this crisis far more aggressively than we have, and I will continue to look for ways to help.

One last statistic. The Wall Street Journal ran a front-page story recently highlighting that one in four homeowners who are paying a mortgage today owes more on their mortgage than their house is worth. One in four homeowners is making house payments on a home that is now underwater. If you owe more than your house is worth and have no extra cash lying around, you are really vulnerable. If there is a sickness in your family, a health care emergency, a job loss, you could lose your home. If you are underwater, you are likely to stay there.

The 10.7 million families who find their mortgages are higher than the value of their homes are at serious risk of foreclosure. Over 400,000 of those families are at risk in my home State of Illinois. JPMorgan Chase estimates that home prices won't hit bottom until next year, so it is going to get worse before it gets better.

So do we stand idly by and watch this—watch people lose their life's savings and their homes, watch these boarded-up homes spring up across our neighborhoods, around towns large and small across America and shake our heads and say it is inevitable? We don't have to. What we have to do is lean on these banks legally, with new laws that put pressure on them to make a difference. Don't appeal to their better nature. We have tried that, and it didn't work. We have to use the law. We have to stand up for this economy and putting it back on its feet, and we have to make the point of saying to these bankers that they have to negotiate these mortgages.

We need to do our part in the Senate. As we focus on health care and jobs and the state of the economy, let's not lose sight of this foreclosure crisis that is devastating neighborhoods across the country. The economy will struggle to fully recover until more families are confident enough in their homes that they are willing to go out and go shopping again. We must do more.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I had a chance to listen to my good friend, the Senator from Illinois; his remarks about why the bill before the Senate is going to reduce costs and pay down on the national debt. Now, that is the Senator from Illinois. I am the Senator from Iowa. But I would like to not refer to my judgment about this bill right now. What I would like to refer to is the judgment outlined in a report that was issued today from the Chief Actuary of the Centers for Medicare & Medicaid Services in the Department of Health and Human Services, a professional person who calls it like it is. That is his responsibility.

Remember, I am quoting from a report that was just given today about this 2,074-page bill we have before us, and that my friend from Illinois was just speaking very favorably about. So I am going to talk about somebody in the executive branch of government, under the President of the United States, who says this about this reform bill—that it will cost more than the status quo. The Chief Actuary of the Centers for Medicare & Medicaid Services issued a report on Senator REID's bill which shows that health care costs would go up, not down, under his bill. The Chief Actuary warned that the Democrats' health care bill would increase health care costs, threaten access to care for seniors, and force people off their current coverage.

In other words, the administration's own Chief Actuary conclusively demonstrates that the Democrats' rhetoric does not match the reality of the bill. The cost curve would bend up, not down. National health expenditures would increase from 16 percent of GDP to 20.9 percent under the Reid bill. The Chief Actuary concluded that the Federal Government and the country would spend $234 billion more under the bill than without it. The Chief Actuary also says that the bill ''jeopardizes access to care for beneficiaries'' because of the bill's severe cuts in Medicare.

Quoting the Chief Actuary:

> Providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and . . . might end their participation in the program (possibly jeopardizing access to care for beneficiaries).

Then it speaks about the savings in the bill being unrealistic. The Actuary says that many of the Medicare cuts ''are unrelated to the providers' costs of furnishing services to beneficiaries.'' It is therefore ''doubtful'' that providers could reduce costs to keep up with the cuts.

Then the Chief Actuary speaks about new taxes costing consumers $11 billion per year. The new taxes in the Reid bill would increase drug and device prices and health insurance premiums for consumers. The Actuary estimates this would increase costs on consumers by $11 billion per year, beginning in 2011—that is 3 years before most benefits kick in.

Then the Actuary speaks about health care shortages, that these health care shortages are ''plausible and even probable,'' particularly for Medicare and Medicare beneficiaries. Because of the increased demand for health care, the Actuary says that access-to-care problems—again these words ''plausible'' and even ''probable'' under the Reid bill. The access problems will be the worst for seniors on Medicare and low-income people on Medicaid. The Actuary says ''providers might tend to accept more patients who have private insurance with relatively attractive payment rates and fewer Medicare and Medicaid patients, exacerbating existing access problems for the latter group.''

Premiums for the government-run plan would actually be higher than under private plans. Agreeing with the Congressional Budget Office, the Chief Actuary said that because the government plan would not encourage higher

value health care and it would attract sicker people, premiums for the government-run plan would be 4 percent higher than for the private insurers.

Then there is a point about employers dropping coverage. The Chief Actuary concluded that 17 million people will lose their employer-sponsored coverage. Many smaller employers would be ''inclined to terminate their existing coverage'' so their workers could qualify for ''heavily subsidized coverage'' through the exchange.

Then it speaks, lastly, about the long-term health care part of this bill called the CLASS Act. The CLASS Act stands for Community Living Assistance Services and Support, C-L-A-S-S.

The Chief Actuary has determined that the CLASS Act long-term care insurance program faces ''a significant risk of failure'' because the high costs will attract sicker people and lead to low participation. Even though premiums would be $240 a month, the policy would result in ''a net Federal cost in the long term.''

I think quoting the Chief Actuary is a very good way to bring attention to the shortcomings that, on this side of the aisle, we have tried to discuss about the 2,074-page bill. Members on this side of the aisle have shown that the Reid bill will bend the health spending curve the wrong way over the next year and that the Reid bill cuts Medicare by $½ trillion and jeopardizes seniors' access to care. So, again, quoting from the Health and Human Services Chief Actuary's analysis confirms the dangerous consequences of the 2,074-page Reid bill.

I would like to highlight some of the findings in a more encompassing way than I just did, quoting the Chief Actuary.

First, contrary to what Members on the other side of the aisle claim, the Chief Actuary's report confirms that the Reid bill bends the cost curve the wrong way. According to the HHS Chief Actuary, over the next 10 years—and this chart highlights it—''total national health expenditures under this bill would increase by an estimated total of $234 billion.'' And a good portion of the increase in national health expenditures would be caused by the so-called fees in this bill on medical devices and on prescription drugs and on health insurance premiums.

Here we have a chart where the Chief Actuary found that ''. . . fees would . . . be passed through to health consumers in the form of higher drug and device prices and higher insurance premiums . . .'' This would result in ''. . . an associated increase of approximately $11 billion per year in overall national health expenditures.'' This refutes claims from the other side that the so-called fees won't be passed on to consumers. And this analysis clearly refutes claims from the other side that the Reid bill saves money.

Next, the Chief Actuary also confirms that the Reid bill jeopardizes beneficiary access to care. The Chief Actuary tallied up around $493 billion in net Medicare cuts, and he raised concerns in particular about two categories of these Medicare cuts.

First, the report warns about the permanent productivity adjustments to annual payment updates. These productivity adjustments ''automatically cut annual Medicare payment updates based on productivity measures for the entire economy,'' not just for that section of health care part of the economy.

The Chief Actuary confirms that these permanent cuts would threaten access to care. Referring to these cuts, he wrote that ''. . . the estimated savings . . . may be unrealistic'' and ''. . . possibly jeopardizing access to care for beneficiaries.''

''It is doubtful that many could improve their own productivity to the end achieved by the economy at large.'' This is a direct quote from the Chief Actuary's report. He goes on to say, ''We are not aware of any empirical evidence demonstrating the medical community's ability to achieve productivity improvements equal to those of the overall economy.''

In other words, basically he is saying this: If you are going to make a judgment that you are going to cut health care costs and that productivity has to be measured by the entire economy, you can't take the entire economy and apply it to a small segment of the economy—health care—and expect it to be fair and expect that small segment of the economy to be as productive and equal the productivity of the entire U.S. economy.

You have to listen to these people who are professionals in these areas. The Chief Actuary is a professional. In fact, the Chief Actuary's conclusion is that it would be difficult for providers to even remain profitable over time, as Medicare payments fail to keep up with the cost of caring for beneficiaries.

Referring to this chart, ultimately, here is the Chief Actuary's conclusion: that providers who rely on Medicare might end their participation in Medicare, ''. . . possibly jeopardizing access to care for beneficiaries.'' That is right out of the Chief Actuary's report, is where that quote comes from.

He even has numbers to back up these statements. His office ran simulations of the effect of these drastic and permanent cuts. Here we have the quote. Based on the simulations, the Chief Actuary found that during the first 10 years, ''. . . 20 percent of Medicare Part A providers would become unprofitable . . . as a result of productivity adjustments.

This is going to be horrible on rural America where we already have difficult times recruiting doctors and keeping our hospitals open. As I said, it is difficult to keep up with these productivity adjustments by our providers. It is for this reason that the Actuary found that ''reductions in payment updates . . . based on economy-wide productivity gains, are unlikely to be sustainable on a permanent annual basis.'' That is right out of the report of the Actuary.

The second category of Medicare cuts the Chief Actuary raises concerns about would be imposed by the new independent Medicare advisory board created in this 2,074-page bill. This new body of unelected officials would have broad authority to make even further cuts in Medicare. These additional cuts in Medicare would be driven by arbitrary cost growth targets based on a blend of general economic growth and medical inflation. This board would have the authority to impose further automatic Medicare cuts, even absent any congressional action.

The Chief Actuary gives a reality check to this proposal. He shows how tall an order the Reid bill's target for health care cost growth actually is.

Again quoting the Actuary:

> Limiting cost growth to a level below medical price inflation would represent an exceedingly difficult challenge.

He points out in this analysis that Medicare cost growth was below this target in only 4 of the last 25 years. Just think—what this 2,074-page bill is trying to accomplish is something that has been accomplished in only 4 out of the last 25 years.

The Actuary also points out that the backroom deals that carved out certain types of providers would complicate this board's effort to cut Medicare. So, to this analysis:

> The necessary savings would have to be achieved primarily through changes affecting physician services, Medicare Advantage payments, and Part D.

So providers, such as hospitals, will escape from this board's cut at the expense of doctors, Medicare Advantage plans, and higher premiums imposed on beneficiaries for their Medicare drug coverage, Part D of Medicare. If we survey the Nation's seniors, I doubt very much they would say that raising their premiums for Medicare drug coverage is what they would call health care reform.

This board, which can cut reimbursements, is guaranteed to have to impose these additional Medicare cuts. In other words, they can do it.

According to the Chief Actuary's analysis of the Medicare cuts in the Reid bill, even though the Medicare cuts already in the Reid bill are ''quite substantial,'' they would—the savings ''would not be sufficient to meet the growth rate targets.'' This means the board will be required by law to impose even more Medicare cuts, in addition to the massive Medicare cuts already in the bill.

This bill imposes a $2½ trillion tab on Americans. It kills jobs with taxes and fees that go into effect 4 years before the reforms kick in.

It kills jobs with an employer mandate. It imposes $½ trillion in higher taxes on premiums, on medical devices, on prescription drugs and more. It jeopardizes access to care with massive

Medicare cuts. It imposes higher costs. It raises premiums. It bends the growth curve the wrong way; in other words, up instead of down. This is not what people have in mind when they think about health care reform.

There is another aspect to this bill that I wish to go over. I hope the third time is the charm. I hope this time the other side of the aisle will understand that the Reid bill increases taxes on middle-income families, individuals, and single parents. That is because contrary to the claims made by the other side of the aisle, the Reid bill clearly raises taxes on middle-income Americans. We have data, not from this Senator, but as I quoted previously the expertise of the Chief Actuary, I want to quote the expertise now of the Joint Committee on Taxation, professionals who are blind to politics, who judge things and call them like they see them. Yesterday I pointed out how the same Joint Committee on Taxation data led my Democratic friends to proclaim that the Reid bill provided a net tax cut to all Americans. We have this distribution chart I used previously to show that that net really is not net.

There is no question that the bill does provide a tax benefit to a group of Americans, a relatively small group. A much larger group, however, will see their taxes go up. Most, if not all in this group, will not benefit from the government subsidy for health insurance. That is part of this 2,074-page bill. As a result, the generous subsidy that is in that bill that is going to a small group of Americans cannot be used by this larger group to offset their increased tax liabilities. The other side, however, wants to spread the large tax benefit that is going to this small group of Americans to everybody; in other words, all Americans, even among those Americans who are not eligible to receive the subsidy, and then somehow claim that all Americans are receiving a tax cut. How can a person receive a tax cut if they are not receiving some type of tax benefit?

Yes, the data shows that some will receive a benefit, but the data also shows that the others will see a tax increase. I have highlighted in yellow these various figures, individuals and families who will see a tax increase. In general, these individuals and families are not receiving the subsidy for health insurance. This means they have no government benefit to offset their new tax liability. The most important point I want to make—for the third time—is that these tax increases fall on individuals making more than $50,000 and families making more than $75,000. Again, I highlighted this group on the Joint Committee on Taxation chart.

The Joint Committee distributed in this chart three separate tax provisions: the high-cost plan tax, the medical expense deduction limitation, and the Medicare payroll tax. Among these tax provisions, the high-cost plan tax seems to be garnering the most attention and also tremendous opposition. I don't have to explain who the opponents of this tax increase are. Everybody knows. In fact, yesterday I had representatives of the Iowa Education Association, the teachers of Iowa, saying they are against that high plan tax because it is going to hurt Iowa teachers. So if this provision, the high-cost plan tax, were to drop out of the Reid bill for one reason or another—and this bill is still being written in secret or at least changes in this 2,074-page bill are being written in secret so who knows what is going to happen to this highly controversial thing—if it is taken out, some Members may feel they have successfully shielded the middle class from a tax increase. Unfortunately, for those Members who may be hopeful of this, lesser known tax provisions that are likely to stay in the changes that come through the Democratic health care reform product would still raise taxes on the middle class.

Again, don't take my word for it. The Joint Committee on Taxation tells us so. Specifically, that committee sent a letter to Senator CRAPO stating that tax provisions such as the cap on flexible savings accounts, the elimination of tax reimbursements for over-the-counter medicines and, most importantly, the individual mandate excise tax penalty will increase taxes on people making less than $250,000. That happens to be middle-class individual, middle-class families, and middle-class single parents.

I ask unanimous consent to have printed in the RECORD that letter.

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

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON TAXATION,
*Washington, DC, December 9, 2009.*

Hon. MIKE CRAPO,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR CRAPO: This letter is in response to your request of December 8, 2009, for information regarding the ''Patient Protection and Affordable Care Act,'' as introduced by Senator Reid. In particular, you requested that we provide you with information on the provisions in the bill that would increase tax liability for taxpayers with adjusted gross income (''AGI'') under $200,000 ($250,000 in the case of a joint return).

In previous correspondence with you, we provided a distributional analysis of the bill. In estimating the distributional effects of the bill, we distributed items that have economic incidence on individuals, including some items that do not have statutory incidence. We are enclosing a copy of that distributional analysis for reference. Included in the distribution table are the following items that would have statutory incidence as well as economic incidence on individuals and are likely to increase tax liabilities for some taxpayers with AGI below $200,000 ($250,000 in the case of a joint return):

1. Raise the 7.5 percent AGI floor on medical expenses deduction to 10 percent; and
2. Additional 0.5 percent hospital insurance tax on wages in excess of $200,000 ($250,000 joint).

You asked us to enumerate items that we have not previously distributed and that we believe could affect the tax liability of taxpayers with AGI below $200,000 ($250,000 in the case of a joint return). Below is a list of the provisions that we have not previously distributed and that have statutory incidence on individuals, with some of those individuals likely to have income below your threshold:

1. Conform definition of medical expenses for health savings accounts, Archer MSAs, health flexible spending arrangements, and health reimbursement arrangements;
2. Increase the penalty for nonqualified health savings account distributions to 20 percent;
3. Limit health flexible spending arrangements in cafeteria plans to $2,500;
4. Impose a five-percent excise tax on cosmetic surgery and similar procedures; and
5. Impose an individual mandate penalty.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,

THOMAS A. BARTHOLD.

Enclosure.

#D-09-26
November 19 2009

**DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF $8,500/$23,000 ($9,850/$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT; PROVIDE EXCHANGE PLAN CREDITS AND SUBSIDIES TO CERTAIN LOW-INCOME TAXPAYERS; INCREASE HI TAX ON EARNINGS IN EXCESS OF $200,000 ($250,000 JOINT FILERS); AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)**

**Calendar Year 2017**

| INCOME CATEGORY (2) | CHANGE IN FEDERAL TAXES (3) | | FEDERAL TAXES (3) UNDER PRESENT LAW | | FEDERAL TAXES (3) UNDER PROPOSAL | | Average Tax Rate (4) | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | Present Law | Proposal |
| | Millions | Percent | Billions | Percent | Billions | Percent | Percent | Percent |
| Less than $10,000 | -$60 | -0.6% | $10 | 0.3% | $10 | 0.3% | 7.3% | 7.2% |
| $10,000 to $20,000 | -$6,154 | -32.3% | $19 | 0.6% | $13 | 0.4% | 4.8% | 3.3% |
| $20,000 to $30,000 | -$19,168 | -36.7% | $52 | 1.7% | $33 | 1.1% | 10.4% | 6.6% |
| $30,000 to $40,000 | -$18,744 | -21.3% | $88 | 2.8% | $69 | 2.3% | 13.9% | 10.9% |
| $40,000 to $50,000 | -$12,573 | -11.3% | $111 | 3.6% | $98 | 3.2% | 14.5% | 12.9% |
| $50,000 to $75,000 | -$12,007 | -3.7% | $325 | 10.5% | $313 | 10.2% | 16.2% | 15.6% |
| $75,000 to $100,000 | $2,292 | 0.7% | $346 | 11.1% | $349 | 11.4% | 18.0% | 18.1% |
| $100,000 to $200,000 | $14,387 | 1.6% | $887 | 28.5% | $902 | 29.4% | 22.6% | 23.0% |
| $200,000 to $500,000 | $6,187 | 1.2% | $535 | 17.2% | $541 | 17.6% | 27.7% | 28.0% |
| $500,000 to $1,000,000 | $2,360 | 1.2% | $205 | 6.6% | $207 | 6.7% | 29.9% | 30.3% |
| $1,000,000 and over | $3,454 | 0.7% | $531 | 17.1% | $534 | 17.4% | 29.8% | 30.0% |
| **Total, All Taxpayers** | **-$40,024** | **-1.3%** | **$3,109** | **100.0%** | **$3,069** | **100.0%** | **21.2%** | **20.9%** |

**Source: Joint Committee on Taxation**
Detail may not add to total due to rounding.

(1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of $8,500 for single plans and $23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of $9,850 for single plans and $26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except age 65 and older. The proposal would increase the hospital insurance ("HI") tax by 0.5 percentage points on earning in excess of $200,000 ($250,000 for married couples filing jointly. The analysis includes the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage.

(2) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.

(3) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

(4) The average tax rate is equal to Federal taxes described in footnote (3) divided by income described in footnote (2).

#D-09-26
November 19, 2009

**DISTRIBUTIONAL EFFECTS OF A PROPOSAL TO IMPOSE A 40 PERCENT EXCISE TAX ON HEALTH COVERAGE IN EXCESS OF $8,500/$23,000 ($9,850/$26,000 FOR RETIRED AND HIGH RISK) INDEXED TO THE CPI-U PLUS ONE PERCENTAGE POINT; PROVIDE EXCHANGE PLAN CREDITS AND SUBSIDIES TO CERTAIN LOW-INCOME TAXPAYERS; INCREASE HI TAX ON EARNINGS IN EXCESS OF $200,000 ($250,000 JOINT FILERS); AND INCREASE THE AGI FLOOR FOR MEDICAL EXPENSE DEDUCTIONS TO TEN PERCENT(1)**

**[Returns in Thousands; Dollars in Millions]**

**Calendar Year 2017**

| INCOME CATEGORY (2) | CHANGE IN FEDERAL TAXES (3) | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | All Returns | | Single Filers | | Joint Filers | | Head of Household | |
| | Returns | Dollars | Returns | Dollars | Returns | Dollars | Returns | Dollars |
| Less than $10,000 | 785 | -$60 | 562 | -$9 | 92 | $4 | 131 | -$55 |
| $10,000 to $20,000 | 4,149 | -$6,154 | 2,955 | -$4,031 | 426 | -$522 | 768 | -$1,601 |
| $20,000 to $30,000 | 7,889 | -$19,168 | 4,228 | -$6,021 | 1,138 | -$3,431 | 2,523 | -$9,716 |
| $30,000 to $40,000 | 9,396 | -$18,744 | 4,694 | -$2,857 | 2,006 | -$6,138 | 2,696 | -$9,749 |
| $40,000 to $50,000 | 9,480 | -$12,573 | 4,631 | -$554 | 2,615 | -$5,223 | 2,233 | -$6,796 |
| $50,000 to $75,000 | 19,375 | -$12,007 | 7,621 | $3,100 | 8,150 | -$9,514 | 3,604 | -$5,592 |
| $75,000 to $100,000 | 14,038 | $2,292 | 3,082 | $1,695 | 9,619 | $134 | 1,338 | $464 |
| $100,000 to $200,000 | 19,465 | $14,387 | 2,326 | $1,325 | 16,397 | $12,545 | 743 | $516 |
| $200,000 to $500,000 | 4,845 | $6,187 | 530 | $792 | 4,200 | $5,220 | 115 | $175 |
| $500,000 to $1,000,000 | 749 | $2,360 | 79 | $226 | 649 | $2,066 | 22 | $67 |
| $1,000,000 and over | 417 | $3,454 | 49 | $364 | 360 | $3,016 | 9 | $73 |
| **Total, All Taxpayers** | **90,589** | **-$40,024** | **30,757** | **-$5,937** | **45,652** | **-$1,881** | **14,180** | **-$32,207** |

**Source: Joint Committee on Taxation**
Detail may not add to total due to rounding.

(1) The proposal would impose a 40% excise tax at the insurer level on health coverage in excess of $8,500 for single plans and $23,000 for family plans. For retired individuals age 55 and over or those covered by a plan for high risk industries, the 40% excise tax would apply on health coverage in excess of $9,850 for single plans and $26,000 for family plans. Amounts would be indexed for inflation by the CPI-U plus one percentage point in years after 2013. The excise tax is nondeductible. The proposal would provide transition relief for the high 17 states. Under the proposal, refundable tax credits would be provided to taxpayers who enroll in exchange plans with income between 100 percent and 400 percent of FPL. The proposal provides for outlays in the form of cost-sharing subsidies for out-of-pocket medical expenses for exchange participants between 100% and 200% of FPL. The proposal increases the AGI threshold for the deduction of medical expenses from 7.5% to 10%, except age 65 and older. The proposal would increase the hospital insurance ("HI") tax by 0.5 percentage points on earning in excess of $200,000 ($250,000 for married couples filing jointly. The analysis includes the revenue effects of changes in excludable compensation due to the effects of the broader reform on employer sponsored coverage.

(2) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] worker's compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, and [8] excluded income of U.S. citizens living abroad. Categories are measured at 2009 levels.

(3) Federal taxes are equal to individual income tax (including the outlay portion of refundable credits), employment tax (attributed to employees), and excise taxes (attributed to consumers). Corporate income tax is not included due to uncertainty concerning the incidence of the tax. Individuals who are dependents of other taxpayers and taxpayers with negative income are excluded from the analysis.

Mr. GRASSLEY. In closing, let me turn to one more chart the Joint Tax Committee has provided. This chart shows the effect on the medical expense deduction limitation. This tax increase is just one of the many tax increases likely to stay in the new Democratic proposal. On this chart, which is for the year 2019, because that is when this bill is fully implemented, we see positive dollar figures. I have highlighted these dollar figures in yellow. For those who may not be able to see, I will reiterate that this chart only has positive dollar figures on it. But remember, as I explained yesterday, when we see positive dollar figures from the Joint Committee on Taxation, that committee is telling us that taxes for these people are going to go up. That means for all of the tax returns listed on this chart, taxes will be going up for each. And this tax increase, the medical expense deduction limitation, reaches as low as someone making $10,000 a year.

Maybe some of these low-income individuals and families who will see a tax increase under this provision will receive a subsidy for health insurance. These people may be able to offset this new tax liability. But you can bet your bottom dollar that a large portion of the middle-income individuals and families are not receiving a subsidy. This means that this tax liability highlighted in yellow cannot be offset by the government benefit.

My Democratic friends cannot escape that fact. Even if my friends drop some of the tax provisions in the current Reid bill, many tax provisions will most likely remain. And those tax provisions will increase taxes on middle-class Americans. This not only breaks President Obama's pledge, but it will arbitrarily burden middle-class Americans for years to come.

I yield the floor.

The PRESIDING OFFICER (Mr. UDALL of Colorado). The Senator from New Jersey.

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

The PRESIDING OFFICER. The conference report to accompany H.R. 3288.

Mr. MENENDEZ. I thank the Chair.

I rise about a program funded in that conference report. It is a program that we put under the framework of Cuba broadcasting. It is surrogate broadcasting into a closed society, a society for which the State controls all information or attempts to control all information to its 11 million citizens. It is a part of a long tradition of the United States with the Voice of America type of broadcasting, the effort to try to bring a free flow of information into countries in the world which are governed by despotic rulers. We did this successfully in the former Soviet Union. We did it successfully in Eastern Europe and during the changes in the Czech Republic, then Czechoslovakia, Poland, the Solidarity movement, and many others. We have been proud of that history of bringing the free flow of information. We now try to use it in different parts of the world based on the new challenges we have.

One of those places in the world in which we do this surrogate broadcasting is into the island of Cuba, because it has a repressive regime that will not allow the free flow of information to go to its people. We have a program called Radio and Television Marti. Marti is sort of like the George Washington of Cuba. It is named after him.

In 1983, Congress passed the Radio Broadcasting to Cuba Act to provide the people of Cuba, through Radio Marti, with information the Cuban Government would try to censor and keep from them. Subsequently in 1990, Congress authorized U.S. television broadcasting to Cuba through Radio and Television Marti to support the right of the Cuban people to receive information and ideas they would not normally receive. It opened radio and television broadcasting to Cuba, provided a consistently reliable and authoritative source of accurate, objective, and comprehensive news commentary and other information about events in Cuba and elsewhere. It did so to promote the cause of freedom inside of Cuba.

We know there is a long history of repressive regimes trying to block our surrogate broadcasting around the world. They just don't simply sit back and say: Send it all in. Let me accept whatever it is you are sending in. That is not their effort. Their effort is to block. And our difficulty with broadcasting has never been a justification for cutting funding for these programs. We have never submitted to the proposition that when a regime tries to block our surrogate broadcasting—whether it was Voice of America, Radio Free Europe, all of those efforts, there was always blocking taking place—that that is a cause or justification for cutting funding. It should not be a different standard now.

I ask, when it comes to Cuba broadcasting, why the double standard? In fact, especially now when change is coming to Cuba, it is in our interest to have the capacity to broadcast information to the Cuban people.

I want to show one of the charts that may be a little difficult back at home, but these are actual photographs which came from a January 2009 Government Accountability Office report which were provided by an organization that reports on Cuban affairs. It depicts evidence of Cubans' ability to watch Television Marti despite Cuban jamming efforts. These pictures were taken from inside of Cuba. They may not be the best picture quality, although I doubt they have digital television inside of Cuba. But nonetheless, they have the ability to see it.

There are other pictures of Cubans. Here is a picture of a group of individuals who, in fact, are part of an effort to create a library system, something as fundamental in the United States as a free public library. There isn't that in Cuba, at least not a free public library. They control what books might be found there.

So these groups try to create information. One of the things they do is, again, to be able to have access—as shown in this picture. This is a panel that is talking on Television Marti. Here, in this picture, is a young child watching a Marti program inside of Cuba. You can see the logo here of Marti TV.

As shown in this picture, this was a special that was broadcast into Cuba and was seen in Cuba on the Reverend Dr. Martin Luther King on the whole issue of peaceful, nonviolent change—as a message to the Cuban people that, in fact, these things could be achieved.

Now, you can see at the bottom of these pictures—it is a little hard to see—but here is the Marti logo that is seen on the bottom right-hand corner on several of these photographs.

This came from that Government Accountability Office report. A January 2009 report by the Government Accountability Office noted the following:

The Broadcasting Board of Governors—which is the oversight we have as the Federal Government—and the Office of Cuba Broadcasting and the U.S. Interests Section in Havana—which, in essence, is, we do not have an Embassy there because we do not have relations, but we have an Interests Section there—that Cuba officials emphasized that they face significant challenges in conducting valid audience research due to the closed nature of Cuban society.

U.S. government officials stationed in Havana are prohibited by the Castro regime from traveling outside of Havana.

We know it is difficult to travel to Cuba for the purpose of conducting audience research. We know the threat of Cuban Government surveillance and reprisals for interviewers and respondents raises concerns about respondents' willingness to answer sensitive questions frankly.

In this January 2009 Government Accountability Report, U.S. officials indicated that research on Radio and TV Marti's audience size faces significant limitations. For example, none of the data is representative of the entire Cuban population. Telephone surveys are the only random data collection effort in Cuba, but it might not be representative of Cuba's media habits for several reasons. But here are two of the main ones.

First, only adults in homes with published telephone numbers are surveyed. According to Broadcasting Board of Governors documents, approximately 17 percent of Cuban adults live in households with published household numbers. That means that 83 percent of the population does not have a published telephone number.

Second, the Board of Governors and the Office of Cuba Broadcasting officials noted that because individuals in

Cuba are discouraged or prohibited by their government from listening to and watching U.S. international broadcasts, they might be fearful of responding to media surveys and disclosing their media habits.

If I am told that it is illegal for me simply to watch the programming of some international organization, and that I can go to jail for listening to that programming, then ultimately—then ultimately—am I going to be truthful to some telephone survey about: Did I watch TV Marti? Did I listen to Radio Marti?

Mr. President, I know about this personally. Years ago, when I was in the House of Representatives, while I had an aunt who was still alive at the time, who I had asked never to acknowledge me as her nephew—which she agreed to—in my second term, however, she was listening to me on Radio Marti, and in a moment of pride, she said: ''Oh, that Menendez is my nephew.''

Unfortunately, she said it in front of some visitors who she thought were her friends. One of them was part of El Comite de Defensa de la Revolucion, which means ''The Committee to Defend the Revolution,'' a block watch organization in every city, in every village, in every hamlet inside Cuba, whose only job is to go and spy on their neighbors and tell the state security who speaks ill or does something against the regime.

Unfortunately, for that simple act of speaking out, saying to a friend: ''Oh, that Menendez is my nephew,'' my aunt suffered serious consequences.

So the audience size might very well be larger than the survey results would indicate because people are fearful to say: Yes, I am listening to Radio and Television Marti, because I cannot do that and not face the consequences of a regime that would arrest me.

Radio and TV Marti have a larger audience in Cuba. Why do I say that? Because a 2007 survey that the Office of Cuba Broadcasting commissioned, intended to obtain information on programming preferences and media habits, also contained data on Radio and TV Marti's audience size.

While the survey was not intended to measure listening rates or project audience size, this nonrandom survey of 382 Cubans, who had recently arrived in the United States—so now they were free to say what they actually did back at home because they were not subject to being arrested simply for listening to Radio and Television Marti—found that 45 percent of all of those respondents reported listening to Radio Marti and that over 21 percent reported watching TV Marti within the last 6 months before leaving Cuba.

So I rise because I want to bring this data, this information, this perspective to the debate.

I am happy to see the very deep cuts that were made to the Office of Cuba Broadcasting that contains both Radio and Television Marti have largely been restored. That is one of the reasons I felt willing to vote to proceed with the omnibus bill.

One of the body's greatest strengths is the ability to freely debate issues in an open format, issues on which, in the end, we might completely disagree, but issues that need to be brought into clear focus for the American people.

However, when I see my colleagues drawing conclusions on their own, without reasonable data to support those conclusions, I feel compelled to come and present an alternative perspective of the facts.

Why is this important to us. The United States is a beacon of light of freedom and democracy around the world. The promotion of democracy and human rights has always been one of the pillars of our foreign policy.

Yesterday was Human Rights Day, which is the day that marks the anniversary of the United Nations Assembly's adoption of the Universal Declaration of Human Rights in 1948. It is recognized every year on December 10.

Yesterday, in the midst of the recognition of this day in Havana, we saw the brutal Castro regime cracking down on people just because they were trying to exercise their right for peaceful demonstration. We saw people beaten, arrested, and forcibly detained.

There is a group of ladies; they call themselves the Ladies in White. They are mothers and sisters and friends of jailed dissidents inside of Cuba. So these are people of imprisoned family members—their son or their daughter, their brother or sister, their friends—and the only reason those people are in jail is because they have pursued peaceful means to try to create change inside of their own country. They may have said something. They may have worn a white band that says ''cambio,'' which means ''change.'' They may have simply uttered the fact that: What we need is change inside of Cuba.

So these Ladies in White—they dress fully in white so that, in fact, it is a form of being noticed, but, again, a peaceful form—held long-stem flowers and miniature Cuban flags. They were attacked by hundreds of angry pro-government demonstrators who sought to drown out their chants of ''freedom'' by yelling ''this street belongs to Fidel.''

Now, in Cuba, these groups are not spontaneous. It is not the citizenry. It is something called ''rapid response brigades.'' They are state security dressed as civilians, whose purpose is to make it seem that the populous is against the human rights activists and political dissidents. But, ultimately, they are state security agents who act in a way to make it seem quite different. But they are thugs.

Mr. President, the reason the regime organizes protests in this way is so if you orchestrate a protest, where it looks like its citizens are protesting against each other, then the regime can deny, in fact, any role in the event.

However, we know very well the role the Castro regime plays in these demonstrations. Especially in light of the events of yesterday and today, we know the Castro regime is a brutal totalitarian dictatorship that continues to violate the most basic human rights, continues to crush debate and crush dialog.

Yesterday, I came to the floor as part of my concerns and I spoke about this gentleman and his wife, as shown in this picture. I spoke about Jorge Luis Garcia Perez ''Antunez.'' This is a gentleman who said, while standing in a plaza in his hometown, which is in the center of Havana—it is not where the tourists go, not on the beaches of Havana; it is in the heart of Havana—he said what we need is the type of change we saw in Eastern Europe.

For that simple statement, he was thrown into jail for 17 years—17 years. He came out a couple years ago, but he has not changed. He has not changed his views or his effort to create human rights.

He issued a public letter that I read yesterday, an English translation, of a public letter he wrote to the present dictator, Raul Castro, the brother of Fidel Castro, and he said many things. I am not going to read the whole letter again, but he said things like: Let me ask you a few questions that I think are important.

> With what right do the authorities, without a prior crime being committed, detain and impede the free movement of their citizens in violation of a universally recognized right?

The very rights that are being observed in that international Human Rights Day of the Universal Declaration of Human Rights.

> What feelings could move a man like Captain Idel Gonzalez Morfi to beat my wife, a defenseless woman so brutally causing lasting effects to her bones for the sole act of arriving at a radio station to denounce with evidence the torture that her brother—

Her brother; this is his wife shown in the picture—

> received in a Cuban prison.

I spoke about him yesterday and his letter. What happened today, Mr. President?

Today, the day after Human Rights Day, and the day after I read his letter into the RECORD, and 2 days after he presented that letter to Raul Castro, he was arrested again by the regime and arbitrarily detained with his wife and another activist.

What is his crime? That I read a letter in the U.S. Senate about his calls for freedom and democracy? And the day after the recognition of international human rights, he gets arrested today, and his wife gets arrested today—or detained today. I am not sure. He got arrested for sure.

TV Marti is one of the many efforts the U.S. Government rightly invests in to try to reach the Cuban people with information, to try to reach the people who were beaten today and yesterday and, for decades, simply for trying to demonstrate peacefully, to speak their mind, to walk in peace and in remembrance of their loved ones they lost under the clenched fists of this regime.

I feel badly that the day after I spoke about Mr. Antunez, he ends up in jail. So we need to have a spotlight, just as we did for Aleksandr Solzhenitsyn in the Soviet Union; just as we did for Vaclav Havel as he was trying to create change for the Czech Republic; just as we did with Lech Walesa when he was having the Solidarnosc Movement inside Poland.

For some reason, I can't get anybody to come to this floor and talk about the human rights violations inside Cuba. I hear a lot about: Let's trade with Cuba, let's do business with Cuba, let's travel to Cuba but, God, I never hear anyone talking about these human rights activists like the Lech Walesas, the Vaclav Havels, the Aleksandr Solzhenitsyns of that other time.

This man got arrested today simply because yesterday we made his letter public. That is the Castro regime that I know, not the romanticism of what some people have about what goes on at that island.

So I am pleased the Office of Cuba Broadcasting has made efforts over the last year to reevaluate the programs they are carrying out and carefully consider creative ways to reach the Cuban people. They have done this with Television Marti. They will continue to do this with other programs. I would expect nothing less. The kind of evaluation should continue. We should constantly strive to tailor our programs so our investments are reaching those who truly need our help, investments that are advancing U.S. foreign policy interests, the national interests of the United States, and the national security interests of the United States.

I have a declaration that came out of Cuba of over 100 human rights activists inside Cuba who are in support of the efforts of the United States as it relates to the surrogate broadcasting that goes into Cuba from Radio and Television Marti. This broadcasting provides some free flow of information of what is happening in the rest of the world, as well as what is happening inside Cuba. Because that is part of what we help here, to let those who otherwise would not know because of a closed society and a dictatorship that rules with an iron fist what is happening even inside their own country, what is happening to people such as Mr. Antunez, what is happening to the ladies in white who are protesting peacefully about their loved ones in jail.

Mr. MENENDEZ. With that letter of over 100 human rights activists is the recognition that we will not let up for Mr. Antunez and the recognition that there are voices who will continue to speak out for the human rights.

The last point I wish to make, imagine if you were sitting in a gulag somewhere, if you were beaten simply because you had a few words to say about creating change peacefully in your own country; imagine if you could be swept away by security police and taken to some jail and maybe not seen for years after that. Would you not want someone somewhere in the world to be standing and speaking for you? I would, and that is what I try to do on this floor.

With that, I yield the floor.

Mr. FEINGOLD. Mr. President, the massive, unamendable spending bill before the Senate includes three bills that the Senate never had a chance to consider, and is chock-full of earmarks. At a time of record budget deficits, we should be showing our constituents that we are serious about fiscal responsibility. Instead of controlling spending, this bill represents business as usual in Congress.

Mr. DEMINT. Mr. President, I rise today to address a question submitted to me from the good Senator from Illinois as to whether the DC Opportunity Scholarship Program will in fact end after this year. In order to respond to my colleague, I would like to highlight a particular section of the Financial Services and General Government Appropriations Act of 2010 that funds the District of Columbia's budget.

In title IV, which explains how the District of Columbia is funded, it states that $13.2 million will indeed be provided for opportunity scholarships for existing students in the DC Opportunity Scholarship Program. However, the very next line clearly states that the funds are to ''remain available until expended,'' which means that the program will eventually be phased out and terminated once the funding for current students is exhausted. Students in the program will slowly be phased out over time, unable to avail themselves of future educational opportunities currently given to them through this program.

The DC Opportunity Scholarship Program, which has the overwhelming support of DC residents, parents, Mayor Adrian Fenty, Chancellor Michelle Rhee, former Mayor Anthony Williams, and a majority of the DC City Council, has now been mandated a slow death by House and Senate appropriators. This scholarship program, which gives students of Washington, DC's poorest families a chance at a quality education, has now effectively been terminated since there is only funding available for existing scholarships and existing students, and not for future scholarships and future students.

By funding this program in such a manner in the omnibus, Congress is ultimately signaling the beginning of the end for this scholarship program. By disallowing future students to take part, the size of the program will shrink year after year, and will deny entry to siblings of existing participants—punishing many who have been waiting in line for this tremendous opportunity. Additionally, the federal evaluation of this program will be compromised as the numbers of participants diminishes, making it difficult for administrators to evaluate the effectiveness of the program.

The fact that this administration continues to claim that the DC Opportunity Scholarship Program is not being terminated is yet another act of deception on their part to the American people. The President, who himself is a recipient of a K–12 educational scholarship, has refused to stand up for children in our Nation's Capital and fight for the same educational opportunities afforded to him and his family—a right he exercises now as he practices school choice with his own children.

Mr. JOHNSON. Mr. President, working families are struggling to pay the costs of health care in this country. As the debate over health care reform progresses, we must keep in mind that Americans need and deserve quality, affordable health care. All too often families learn that the plan they could afford was not adequate when they needed it most.

I recently heard from Cory and Erin in Lake Herman, SD. They shared the story of their daughter's birth and how they discovered the inadequacies of their seemingly affordable health insurance policy. When Cory and Erin's daughter Katarzyna was born in 2006, Cory was working as an English and math teacher. At the time, the family health insurance plan available to him through the school district cost nearly 50 percent of his monthly salary. Cory chose instead to buy a catastrophic, high-deductible policy on the individual market for just over 10 percent of his income. Cory and Erin were healthy adults and had no major medical issues until the birth of their daughter. Their insurance policy did not cover prenatal or maternity care.

Wanting to be smart health care consumers, Cory and Erin shopped around for the best and most affordable hospital to welcome the birth of their first child and decided on their nearby community hospitial. However, when Katarzyna was born, she had a lung infection that required immediate action. Exhausted and worried for the health of their new baby girl, Cory and Erin had only moments to decide whether to airlift Katarzyna to a hospital with specialized care. At that moment, the last thing they could think about was the cost.

Katarzyna spent 3 nights in the Natal Intensive Care Unit of one of the State's largest hospitals, where she received top-notch care and survived the near-fatal pneumonia. The total cost came to $24,000, of which Cory and Erin's high-deductible insurance policy covered only $12,000. For the next several months, the family faced not only the challenges of a new baby but significant debt and a drawn-out struggle with their insurance company. They found a mistake with nearly every bill they received. Since this experience, Cory and Erin have purchased a new policy but worry that the insurance they can afford is not adequate in the face of another unforeseen medical emergency.

Like many Americans, Cory and Erin have health insurance. Despite their limited income, they took the responsibility to buy their own policy and

tried to be smart health care consumers. Their experience, however, illustrates the vulnerability of Americans who purchase insurance on the individual market, as well as the limits to which it is possible for Americans to be informed health care consumers.

The health care market does not function like other consumer markets. Ask your neighbor what a gallon of milk costs and they could tell you. Ask them how much it costs to have a baby and you would likely get a variety of answers, based entirely on their own experience with this important life event. The fact is the cost of having a baby depends. It depends on how much you pay for health insurance, what your insurance policy will cover and how much of that cost is your share. It depends on where you live, what complications may arise and whether the hospital nearby is equipped to handle an emergency.

The Patient Protection and Affordable Care Act will guarantee families access to affordable health insurance and coverage for essential benefits, including prenatal and maternity care. New health insurance exchanges in every State will provide a menu of quality, affordable health insurance plans for the self-employed and those who can't afford the coverage offered by their employer. Families who need assistance will be eligible for tax credits to make the plan of their choice affordable. Most importantly, families like Cory, Erin and Katarzyna's will have health insurance that covers life's essential needs. The birth of a child should not be a time to worry about what your health insurance will pay for or whether you can afford the treatment you need. Health care reform will give American families one less thing to worry about with the security of quality, affordable health care.

Mr. MENENDEZ. Mr. President, I ask unanimous consent that after any leader remarks on Saturday, December 12, the Senate then resume consideration of the conference report to accompany H.R. 3288, and that at 9:30 a.m., the Senate proceed to vote on the motion to invoke cloture on the conference report, with the time until 9:30 a.m. equally divided and controlled between the leaders or their designees; further, that if cloture is invoked, then postcloture time continue to run during any recess, adjournment, or period of morning business; that on Sunday, December 13, all postcloture time be considered expired at 2 p.m., and the Senate proceed to vote on the adoption of the conference report to accompany H.R. 3288.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

## MORNING BUSINESS

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

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

## TRIBUTE TO CAROL BORNEMAN

Mr. MCCONNELL. Mr. President, today I would like to recognize an outstanding Kentuckian for her talented efforts to entertain and educate the public about the Cumberland Gap National Historic Park. Ranger Carol Borneman is the recipient of the 2009 Freeman Tilden Award for the southeast region of the National Park Service. Ranger Carol, as she is commonly known from her television show, ''Wild Outdoor Adventures with Ranger Carol,'' has been with the Cumberland Gap National Historical Park for over 15 years and serves as the park's supervisory interpreter.

The Cumberland Gap, through the Cumberland Mountains and near the Kentucky-Virginia border, was America's historical gateway to the West. Ranger Carol's stories bring to life the travel experiences of America's earliest western settlers in a way that is both educational and memorable.

There is no doubt that it is Ranger Carol's love for the park that keeps her stories entertaining. Mark Woods, Superintendent of the Cumberland Gap National Historical Park, stated that ''she truly has a passion for the work that she does and it definitely comes through on the show. . . . You cannot watch the show without being captivated by Carol's knowledge, dedication, and sheer enthusiasm.''

The Freeman Tilden Award is the most prestigious award given in the field of interpretation and education within the National Park Service. Borneman is not new to such an honor; in fact, this is the second time she has received it. It is with great pride that I rise today to ask my colleagues to join me in congratulating Ranger Carol Borneman on receiving the Freeman Tilden Award, and for her outstanding efforts to keep important Kentucky history alive for future generations to enjoy.

## REMEMBERING A. ROBERT DOLL

Mr. MCCONNELL. Mr. President, today I would like to reflect on the life of a dear friend, the late A. Robert Doll. Bob, as he was affectionately known, was a well-known lawyer, leader, and volunteer in his beloved Louisville community. His passing is a great loss, but his legacy lives on in the business and organizations he so dearly loved.

Mr. Doll was a founding member of the law firm Greenebaum, Doll & McDonald in Louisville. He joined the firm in the 1950s after receiving his law degree from the College of William and Mary. During his 50-plus years with Greenebaum, Doll & McDonald, Bob helped the firm grow from a mere 20 lawyers to a firm with multiple offices and 120 lawyers. When Bob was just 30 years old, he argued and won a case before the U.S. Supreme Court.

Mr. Doll showed his respect for his customers with the motto, ''I believe that a successful law firm must emphasize and create the delivery of prompt and exceptional legal service to the client—we must remember that the client is king.'' One of the great successes of his career was helping to bring the Toyota plant to Scott County. He also served as the president of the Louisville Bar Foundation. In 1986, Mr. Doll was named Lawyer of the Year by the Louisville Bar Association.

Bob was also active in his community, as he served as president of the Greater Louisville YMCA board of directors and maintained a leading role in the Boy Scouts of America. Phillip Scott, the current firm chairman of Greenebaum, Doll & McDonald, stated that ''Mr. Doll was not just a great lawyer, but a great man and great leader. He was a progressive leader who made Greenebaum the firm it is today. We deeply value the friendship, ideals and character he bestowed upon on us, and we'll miss him greatly.''

As a leader in his community, Bob Doll was a man of integrity who made a real positive impact in the Commonwealth. His devotion for creating and maintaining a client-focused business shows he always cared about serving the community first. He will be missed by all who had the pleasure of knowing him, and I ask that my colleagues join me in paying tribute to the wonderful life of Mr. A. Bob Doll.

## EL SALVADOR

Mr. LEAHY. Mr. President, I want to briefly discuss a subject that should interest all Senators concerning the country of El Salvador, which recently elected a new President and last month suffered extensive loss of life and devastating property damage as a result of torrential rains caused by Hurricane Ida.

First, I congratulate the people of El Salvador on the election, which was historic in that President Funes is the country's first President since the end of the civil war who is a member of the FMLN, which after the 1992 Peace Accords evolved from an armed insurgency into a political party. I am encouraged by what I have heard about President Funes' policies and wish him the best.

Second, the destruction caused by Hurricane Ida was extensive. Exceptionally heavy and constant rain fell on November 7 and 8, resulting in flooding and landslides that killed 192 people. Another 80 were reported missing, and more than 14,295 others were displaced from their homes. Thousands of homes, as well as roads, bridges, and other public buildings, were damaged or destroyed.

On November 10, U.S. Chargé d'Affaires Robert Blau declared a disaster in response to the damage, and the U.S. Agency for International Development has so far allocated some $280,851 in humanitarian aid. An assessment of the

total damage is underway, but it is expected to be in the hundreds of millions, if not billions, of dollars.

Congressman JIM MCGOVERN and I have urged the administration to provide additional aid. We remember how the U.S. Government all but forgot about El Salvador after the war ended, and this is a time to help the Salvadoran people recover from this tragedy.

Third, an issue that has deeply concerned me for many years is the problem of corruption and impunity in El Salvador. The police and the courts lack the training and resources they need, crimes are rarely solved and perpetrators are rarely punished. Violent crime and corruption have become endemic. El Salvador's democratic and economic development will continue to be impeded by a justice system that is incapable of enforcing the rule of law, and in which the Salvadoran people and foreign investors have little confidence.

One of the courageous Salvadorans who is trying to change this is Ms. Zaira Navas, inspector general of the National Police. She has a woefully inadequate budget and too few staff. But despite that, from everything I have heard she is doing an outstanding job for justice and the people of El Salvador.

I mention Ms. Navas because of the critical importance of the job she is doing, and because she has recently received death threats and I am concerned for her safety. I urge officials at the U.S. Embassy to discuss with President Funes what steps can be taken immediately to provide her the security she needs, and to increase the budget of her office.

El Salvador is a small country but one with which the U.S. has a long history. We both have newly elected presidents, and I am hopeful that we will see a renewed effort to work together to broaden our relations. Nothing, in my view, is more important than strengthening the rule of law and supporting people like Ms. Navas, but we should also expand our collaboration in health, education and exchanges, the environment, trade and investment, science and technology, the arts and culture.

## CONGO

Mr. FEINGOLD. Mr. President, last month, the United Nations Group of Experts on the Democratic Republic of Congo presented its latest report to the U.N. Security Council. Over the years, the Group of Experts has conducted critical investigations into violations of the sanctions and the U.N. arms embargo toward Congo as well as human rights abuses and the linkages between natural resource exploitation and the financing of illegal armed groups. Yet, too often, the Group of Experts' reports and recommendations have not resulted in action by the Security Council and/or U.N. member states. I hope it will be different with this report, especially since it identifies a number of concrete steps through which U.N. member states can address the financial and support networks that fuel the violence in eastern Congo.

This new Group of Experts report particularly focuses on the FDLR, the armed group comprising many former Rwandan génocidaires that is at the heart of the instability in eastern Congo. It documents how this group continues to benefit from ''residual but significant support'' from top commanders of the Congolese military. It also documents how this group is supported by a far-reaching international Diaspora network. Based on records of satellite phones, the Group of Experts found that the FDLR commanders frequently communicate with people in twenty-five different countries in Europe, North America and Africa. The report also mentions credible reports and testimony that the FDLR is using Burundi ''as a rear base'' for regrouping and recruitment purposes.

To address these continued support networks, the Group of Experts recommends that U.N. member states direct their respective law enforcement and security agencies to conduct investigations and share relevant information on FDLR Diaspora members providing material support to the group. The Group also calls on member states to prosecute violations of the sanctions regime by their nationals or leaders of armed groups that are currently residing within their countries. The report cites three such leaders who have resided in France and Germany. With regard to the Congolese military, the Group recommends that the Security Council require member states to notify and get approval from the Sanctions Committee for all deliveries of military equipment and provision of training to Congo. This would help ensure that international assistance is not contributing to abusive behavior or going to units of the military believed to be colluding with armed groups.

Building on its previous reports, the Group of Experts report also shows how the FDLR and other armed groups continue to benefit from the exploitation of natural resources. According to this Group's investigations, the FDLR continues to get millions of dollars in direct financing from gold and cassiterite reserves in eastern Congo. The report illustrates how gold from eastern Congo is smuggled out to Uganda and Burundi, and then travels on to the United Arab Emirates and ultimately international markets. Similarly, the report documents how former rebels of the CNDP—who have ostensibly become part of the Congolese military—continue to control and exploit mineral-rich areas. In fact, two of the most lucrative mining sites are reportedly controlled by units of the Congolese military that are composed almost exclusively of former CNDP units. This is especially worrying in the context of the CNDP's integration into the Congolese military, which is still extremely fragile.

I have long called for action to address the armed exploitation of Congo's minerals, which fuels this conflict. I was pleased to join with Senators BROWNBACK and DURBIN earlier this year to introduce the Congo Conflict Minerals Act, S. 891, which would commit the United States to address this issue comprehensively. And I was glad that Secretary Clinton spoke about this issue during her visit to Congo in August. As the Group of Experts report makes clear, armed groups will continue to exploit the region's rich mineral base as long as it is profitable. The Group of Experts recommends that member states take necessary measures to clarify the due diligence obligations of companies under their respective jurisdictions that operate with these minerals. The Group also calls for the Congolese government to establish an independent monitoring team, with international support, to conduct spot checks of mines and mineral trading routes.

I am glad that there is increasing outrage about what is happening in eastern Congo. It is the single deadliest conflict since the Second World War and millions have been displaced from their homes, forced to live in squalid conditions. Countless women and girls and some men and boys in the Congo have endured rape and sexual violence. But our outrage means little unless it translates into concrete actions to fundamentally change the situation in Congo. We need to finally get serious about addressing the underlying issues that make this war profitable and allow it to persist. The Group of Experts has provided a clear picture of some of those issues as well as specific ways that U.N. member states can address them, including within our own national jurisdictions. I applaud the Group for its courageous work. I strongly hope that the Security Council will pursue the report's recommendations, and I urge the Obama administration to lead the way in this respect.

## RECOGNIZING WREATHS ACROSS AMERICA

Ms. SNOWE. Mr. President, today I pay tribute to Wreaths Across America and Morrill and Karen Worcester, whose outstanding vision of a nationwide effort to extol America's fallen heroes is now in its 18th year!

Nothing could be more central to the Wreaths Across America organization—which counts among its many tremendous volunteers and partners, The Maine State Society of Washington, DC, the Civil Air Patrol, the Patriot Guard Riders, and members of The American Legion and Veterans of Foreign Wars—than its noble mission to remember those who made the ultimate sacrifice, honor those who serve, and teach our children that today's freedoms have been won at a great price. And how fitting it is that

Mainers across our State ushered in this week of solemn events and wreath-laying ceremonies sponsored by Wreaths Across America, the culmination of which will be the delivery of as many as 16,000 wreaths for placement at Arlington National Cemetery on December 12 as well as observances in more than 400 participating locations nationwide, including 24 overseas veterans cemeteries. Indeed, I could not have been more gratified to join Senator COLLINS in introducing legislation, designating December 12, 2009, as ''Wreaths Across America Day'' which passed the Senate unanimously on the first of this month.

What an inexpressible source of pride it is that tomorrow, on the morning of the 12th, a convoy of Mainers is scheduled to arrive at Arlington National Cemetery to lay Maine-made balsam wreaths at the grave sites of our Nation's fallen heroes. The Patriot Guard Riders will continue their tradition of escorting tractor-trailers filled with wreaths donated by Worcester Wreath Company in Harrington, ME, to Arlington National Cemetery. On a personal note, I well recall the Worcester's initiating the Arlington Wreath Project in December of 1992, when Morrill called my office to ask if he could place his excess wreaths on the graves at Arlington National Cemetery. I never could have imagined that what occurred then would someday evolve into a nationwide expression of unfailing gratitude to our troops.

The enduring legacy of our bravest and finest for whom service above self and country above self-interest is woven into the fabric of our greatness is a powerful reminder that freedom is not free, especially as the indelible memories of those heroes who, in the immortal words of President Lincoln ''gave the last full measure of devotion,'' are etched forever in our minds and upon our hearts. We also owe an enormous debt of gratitude to the men and women extraordinary enough to wear the uniform who are currently serving in harm's way and placing their lives on the line on our behalf, especially in Iraq and Afghanistan. Indeed, what a fitting remembrance this annual gesture of reverence and gratefulness by Wreaths Across America represents, especially during this joyous season of giving, for those who have bequeathed this great land so much, and for whom we are truly grateful.

## TRIBUTE TO FIRST SERGEANT BRADLEY G. SIMMONS

Mr. BROWN. Mr. President, I rise to honor 1stSgt Bradley G. Simmons, U.S. Marine Corps, for his year of service to the U.S. Senate and for his continuing service to our Nation and the Marine Corps.

For the past year, 1stSgt Bradley Simmons has worked in my office and served the people of Ohio as the first enlisted Marine fellow in the U.S. Senate.

Before joining the Senate, 1stSgt Bradley Simmons served in Kuwait with the 3rd Assault Amphibian Battalion. He also participated in the initial attack and continuing operations in Iraq.

His heroic service as an AAV section leader during that time earned him the Navy and Marine Corps Commendation Medal and a combat distinguishing device for valor.

1stSgt Bradley Simmons' strength, dedication, and firsthand experience overseas made him an invaluable resource for my staff and our Nation's service members and veterans.

Understanding of the difficult transition for returning service members and veterans, 1stSgt Bradley Simmons reached out to help them and their families in tangible ways.

From helping Ohio veterans with their VA claims; to assisting a wounded service member during rehabilitation; to meeting and speaking with the families whose loved ones are overseas, 1st Sgt Bradley Simmons demonstrated an unequivocal commitment to his fellow service members.

His tireless work on the Visions Scholars Act of 2009 will help ensure that veterans suffering from eye injuries would not also suffer from the current nationwide shortage of visions specialists at the VA.

The Vision Scholars Act of 2009 passed the Senate last month with great assistance from Sergeant Simmons.

But 1stSgt Bradley Simmons has been more than a trusted adviser.

He's been a teacher and a friend. As First Sergeant Simmons likes to say, he has been running a full-scale Marine Corps familiarization program in my office for the past year.

With a story-telling talent that left you laughing, with a moment of contemplation on the life of a marine, or with a little PT encouragement for the deskbound, First Sergeant Simmons made us appreciate the leadership qualities that are found throughout the ranks of the Marine Corps, but especially in him.

From interns in my office to constituents in the State, to all of my staff in Ohio and Washington, he succeeded in educating us about the honor, tradition, and sacrifices readily made by our Marines and our military forces.

He made us better at our jobs and better citizens in our communities.

He accompanied me to Walter Reed to visit troops recovering from combat injuries and later assisted in helping a few of them transition to life as a civilian, or on active duty in the guard or reserve.

He invited my staff to the Pentagon to a welcome home those recently injured in Iraq and Afghanistan.

During this past year, First Sergeant Simmons taught us about the determination and commitment of the men and women who give honor to the Marine Corps.

A lot has changed in the past year for our office, and for 1stSgt Bradley Simmons as well. First Sergeant Simmons came to my office as a gunnery sergeant.

At his promotion ceremony a few weeks back, his superiors explained that the Marine Corps does not base promotion in rank on previous performance and accomplishment.

Instead, promotion is based on a candidate's innate capability and potential to do the job well and the rank of first sergeant justice.

Like his superiors, I am as confident that he will succeed in anything he attempts and that he demonstrates the courage and commitment that we recognize in him.

His humility belies his dedicated service to our Nation. It provides great comfort knowing that hundreds of marines will have the opportunity to work, live, learn, and serve with First Sergeant Simmons.

He is a testament to the Marines, to our Nation, to his family, and to his home State of Kansas.

And to Karen, his wife, thank you for your support and sacrifice while your husband serves this Nation. I enjoyed meeting you and I know that 1stSgt Bradley Simmons can do what he does because of your love and support.

After having the privilege of working with First Sergeant Simmons over the past year and seeing the lasting mark he has left on my office, I am honored to have someone of his caliber and commitment representing our Nation.

Thank you, 1stSgt Bradley G. Simmons, for your distinguished service to the people of Ohio and for your continued commitment to protecting our Nation and the prosperity of all Americans.

## MESSAGES FROM THE PRESIDENT

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

## EXECUTIVE MESSAGES REFERRED

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

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

## MESSAGES FROM THE HOUSE

At 10:47 a.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4017. An act to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the ''Ann Marie Blute Post Office''.

At 3:00 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate:

H.J. Res. 62. Joint resolution appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

The message further announced that pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), as amended by division P of the Consolidated Appropriations Resolution, 2003 (22 U.S.C. 6901), the Minority Leader re-appoints the following members on the part of the House of Representatives to the United States-China Economic and Security Review Commission, effective January 1, 2010: Mr. Peter T.R. Brookes of Virginia and Mr. Daniel M. Slane of Ohio.

## MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 4017. An act to designate the facility of the United States Postal Service located at 43 Maple Avenue in Shrewsbury, Massachusetts, as the ''Ann Marie Blute Post Office''; to the Committee on Homeland Security and Governmental Affairs.

## 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. 1506. An act to provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–3981. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''National Veterinary Accreditation Program'' (Docket No. APHIS–2006–0093) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3982. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Swine Health Protection; Feeding of Processed Product to Swine'' (Docket No. APHIS–2008–0120) received in the Office of the President of the Senate on December 10, 2009; to the Committee on Agriculture, Nutrition, and Forestry.

EC–3983. A communication from the Chairman, Board of Governors of the Federal Reserve System, transmitting, pursuant to law, a report relative to the Buy American Act; to the Committee on Banking, Housing, and Urban Affairs.

EC–3984. A communication from the Chief of the Publications and Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''New Qualified Plug-in Electric Drive Motor Vehicle Credit'' (Notice No. 2009–89) received in the Office of the President of the Senate on December 4, 2009; to the Committee on Finance.

EC–3985. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan relative to the design and manufacture of propellant actuated devices for F–15J Aircraft; to the Committee on Foreign Relations.

EC–3986. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Mexico relative to the design and manufacture of Military Flexible Printed Circuit Board Assemblies (Flex Circuits) in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3987. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including, technical data, and defense services to Japan relative to the design, manufacture, and repair of the Japan PATRIOT Product Improvement Program in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3988. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to Israel relative to the design, manufacture, and delivery of tactical computers and data processing and communications systems in the amount of $50,000,000 or more; to the Committee on Foreign Relations.

EC–3989. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to Canada to support the sale of C–130J Hercules Aircraft in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3990. A communication from the Assistant Secretary, Bureau of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the certification of a proposed technical assistance agreement for the export of defense articles, including, technical data, and defense services to the United Kingdom relative to the design and manufacture of Wing Trailing Edge Panels and Flap Hinge Fairings for the C–17 Globemaster III Transport Aircraft in the amount of $100,000,000 or more; to the Committee on Foreign Relations.

EC–3991. A communication from the Secretary, Department of Agriculture, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–3992. A communication from the Acting Chairman, Equal Employment Opportunity Commission, transmitting, pursuant to law, the Semiannual Report of the Inspector General for the period from April 1, 2009, through September 30, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–3993. A communication from the Assistant Deputy Associate Administrator for Acquisition Policy, General Services Administration, Department of Defense and National Aeronautics and Space Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2005–38'' received in the Office of the President of the Senate on December 9, 2009; to the Committee on Homeland Security and Governmental Affairs.

EC–3994. A communication from the Chief Human Capital Officer, Small Business Administration, transmitting, pursuant to law, a report relative to a vacancy in the position of Chief Counsel for Advocacy, received in the Office of the President of the Senate on December 8, 2009; to the Committee on Small Business and Entrepreneurship.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 448. A bill to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media.

## 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. CARPER (for himself, Mr. ALEXANDER, Mr. BYRD, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. WARNER, and Mr. WEBB):

S. 2872. A bill to authorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. BEGICH:

S. 2873. A bill to amend the Internal Revenue Code of 1986 to deny the deduction for direct to consumer advertising expenses for prescription pharmaceuticals and to provide a deduction for fees paid for the participation of children in certain organizations which promote physical activity; to the Committee on Finance.

By Ms. LANDRIEU:

S. 2874. A bill to designate the facility of the United States Postal Service located at 2000 Louisiana Avenue in New Orleans, Louisiana, as the ''Ray Rondeno, Sr. Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

By Mr. FEINGOLD:

S. 2875. A bill to establish the Commission on Measures of Household Economic Security to conduct a study and submit a report containing recommendations to establish and report economic statistics that reflect the economic status and well-being of American households; to the Committee on Homeland Security and Governmental Affairs.

By Ms. LANDRIEU:

S. 2876. A bill to amend the Internal Revenue Code of 1986 to clarify the capital gain

or loss treatment of the sale or exchange of mitigation credits earned by restoring wetlands, and for other purposes; to the Committee on Finance.

By Ms. CANTWELL (for herself and Ms. COLLINS):

S. 2877. A bill to direct the Secretary of the Treasury to establish a program to regulate the entry of fossil carbon into commerce in the United States to promote clean energy jobs and economic growth and avoid dangerous interference with the climate of the Earth, and for other purposes; to the Committee on Finance.

By Mrs. GILLIBRAND:

S. 2878. A bill to prevent gun trafficking in the United States; to the Committee on the Judiciary.

By Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. KERRY, Ms. SNOWE, Mr. PRYOR, and Mr. WARNER):

S. 2879. A bill to direct the Federal Communications Commission to conduct a pilot program expanding the Lifeline Program to include broadband service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

## ADDITIONAL COSPONSORS

S. 605

At the request of Mr. KAUFMAN, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 605, a bill to require the Securities and Exchange Commission to reinstate the uptick rule and effectively regulate abusive short selling activities.

S. 730

At the request of Mr. ENSIGN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 730, a bill to amend the Harmonized Tariff Schedule of the United States to modify the tariffs on certain footwear, and for other purposes.

S. 812

At the request of Mr. BAUCUS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 812, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 1067

At the request of Mr. BROWNBACK, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 1067, a bill to support stabilization and lasting peace in northern Uganda and areas affected by the Lord's Resistance Army through development of a regional strategy to support multilateral efforts to successfully protect civilians and eliminate the threat posed by the Lord's Resistance Army and to authorize funds for humanitarian relief and reconstruction, reconciliation, and transitional justice, and for other purposes.

S. 1389

At the request of Mr. NELSON of Nebraska, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. 1389, a bill to clarify the exemption for certain annuity contracts and insurance policies from Federal regulation under the Securities Act of 1933.

S. 1524

At the request of Mr. KERRY, the name of the Senator from Nebraska (Mr. JOHANNS) was added as a cosponsor of S. 1524, a bill to strengthen the capacity, transparency, and accountability of United States foreign assistance programs to effectively adapt and respond to new challenges of the 21st century, and for other purposes.

S. 1589

At the request of Ms. CANTWELL, the names of the Senator from Missouri (Mr. BOND) and the Senator from Illinois (Mr. BURRIS) were added as cosponsors of S. 1589, a bill to amend the Internal Revenue Code of 1986 to modify the incentives for the production of biodiesel.

S. 1790

At the request of Mr. DORGAN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1790, a bill to amend the Indian Health Care Improvement Act to revise and extend that Act, and for other purposes.

S. 1859

At the request of Mr. ROCKEFELLER, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 1859, a bill to reinstate Federal matching of State spending of child support incentive payments.

S. 1932

At the request of Mr. BENNET, the name of the Senator from Missouri (Mrs. MCCASKILL) was added as a cosponsor of S. 1932, a bill to amend the Elementary and Secondary Education Act of 1965 to allow members of the Armed Forces who served on active duty on or after September 11, 2001, to be eligible to participate in the Troops-to-Teachers Program, and for other purposes.

S. 2776

At the request of Mr. ALEXANDER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2776, a bill to amend the Energy Policy Act of 2005 to create the right business environment for doubling production of clean nuclear energy and other clean energy and to create mini-Manhattan projects for clean energy research and development.

S. 2777

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2777, a bill to repeal the American Recovery Capital loan program of the Small Business Administration.

S. 2833

At the request of Mr. REED, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 2833, a bill to provide adjusted Federal medical assistance percentage rates during a transitional assistance period.

S. 2843

At the request of Ms. STABENOW, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 2843, a bill to provide for a program of research, development, demonstration, and commercial application in vehicle technologies at the Department of Energy.

S. 2852

At the request of Mr. BEGICH, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 2852, a bill to establish, within the National Oceanic and Atmospheric Administration, an integrated and comprehensive ocean, coastal, Great Lakes, and atmospheric research, prediction, and environmental information program to support renewable energy.

S. 2869

At the request of Ms. LANDRIEU, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from New Hampshire (Mrs. SHAHEEN) and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of S. 2869, a bill to increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

S. CON. RES. 20

At the request of Mr. BYRD, the name of the Senator from North Carolina (Mr. BURR) was added as a cosponsor of S. Con. Res. 20, a concurrent resolution authorizing the last surviving veteran of the First World War to lie in honor in the rotunda of the Capitol upon his death.

AMENDMENT NO. 2790

At the request of Mr. CASEY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from Alaska (Mr. BEGICH) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of amendment No. 2790 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2827

At the request of Mr. TESTER, the name of the Senator from Colorado (Mr. UDALL) was added as a cosponsor of amendment No. 2827 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2878

At the request of Mr. CARDIN, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Alaska (Mr. BEGICH) were added as cosponsors of amendment No. 2878 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2879

At the request of Mr. CARDIN, the name of the Senator from Wisconsin

(Mr. KOHL) was added as a cosponsor of amendment No. 2879 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2904

At the request of Ms. SNOWE, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of amendment No. 2904 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2909

At the request of Mr. NELSON of Florida, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of amendment No. 2909 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2924

At the request of Mr. CASEY, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 2924 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 2938

At the request of Mrs. GILLIBRAND, the names of the Senator from Minnesota (Mr. FRANKEN), the Senator from Massachusetts (Mr. KIRK) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of amendment No. 2938 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3011

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. WICKER) was added as a cosponsor of amendment No. 3011 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3037

At the request of Mr. JOHNSON, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 3037 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3101

At the request of Mr. FRANKEN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of amendment No. 3101 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3102

At the request of Mr. DURBIN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of amendment No. 3102 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3112

At the request of Ms. CANTWELL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of amendment No. 3112 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3114

At the request of Mr. GRASSLEY, the names of the Senator from Nevada (Mr. REID) and the Senator from Montana (Mr. TESTER) were added as cosponsors of amendment No. 3114 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3119

At the request of Mr. WARNER, the names of the Senator from Delaware (Mr. CARPER), the Senator from Maine (Ms. SNOWE) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of amendment No. 3119 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

AMENDMENT NO. 3132

At the request of Mrs. MCCASKILL, the name of the Senator from Virginia (Mr. WEBB) was added as a cosponsor of amendment No. 3132 intended to be proposed to H.R. 3590, a bill to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.

## STATEMENT ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CARPER (for himself, Mr. ALEXANDER, Mr. BYRD, Mr. LIEBERMAN, Mr. VOINOVICH, Mr. WARNER, and Mr. WEBB):

SA 2872. A bill to authorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. CARPER. Mr. President, I rise today with my colleagues to introduce an important and bipartisan piece of legislation that will help protect our Nation's history for future generations.

Our bill reauthorizes the National Historical Publications and Record Commission, or NHPRC for short, which was first established by Congress in 1934. The Commission is the grant-making body of the National Archives and Records Administration and is comprised of representatives from the President of the United States, the U.S. Senate and House of Representatives, the Federal judiciary, the Departments of State and Defense, the Library of Congress, and six national, professional associations of archivists. Since 1964, the Commission has funded projects that locate, preserve, and provide public access to some our nation's most precious historical resources that otherwise would be lost and destroyed.

For example, some of the history that has been preserved by the NHPRC over the years has helped award-winning historian David McCullough write his biography of John Adams and Pulitzer Prize-winner Ron Chernow write his biography of Alexander Hamilton. Further, the NHPRC has helped establish or modernize public records programs in cities all across America such as the cities of Seattle, Boston, and San Diego. The NHPRC also has been the key federal body to help preserve the oral histories of many Native American tribes such as the Seneca, Blackfoot, Sioux, Navajo, Apaches, and dozens more.

Further, I am proud to say that the NHPRC recently sped up and digitized over 5,000 documents left behind by our Nation's founding fathers that were previously unpublished. Congress passed legislation last year that I was honored to co-author with our former colleague, Senator John Warner from Virginia, requiring the NHPRC to work with the groups publishing the volumes so that the documents could be made available online at no charge to any student of history. Before, they were walled-up behind the doors of large libraries and expensive to access. To put that into context, the NHPRC has saved anyone who needs to view the letters of John Adams thousands of dollars, which would have been the traditional cost of a complete set of published letters.

Lastly, the bill I am introducing today removes an artificial profit cap that Congress put in place a few years

ago that prevents the National Archives and Records Administration from operating its regional facilities more like a business. For example, there are times at the end of the year when the revolving fund that pays for the operation and maintenance of the regional archival facilities earns a profit. Instead of incentivizing the National Archives to save the excess profit for long-term capital investments, the cap incentivizes regional facilities to spend the money on short term projects that they may not be needed. This simply does not make sense for the National Archives or for the taxpayer.

I look forward to working with my colleagues to get this important and necessary bill enacted before it's too late. I think everyone can agree that one of the things our democracy relies on is educated citizenry. The NHPRC is the principle body that helps make that happen.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2872

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. AUTHORIZATION OF APPROPRIATIONS THROUGH FISCAL YEAR 2014 FOR NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION.**

Section 2504(g)(1) of title 44, United States Code, is amended—

(1) in subparagraph (R), by striking ''and'';

(2) in subparagraph (S), by striking the period and inserting ''; and''; and

(3) by adding at the end of the following:

''(T) $13,000,000 for fiscal year 2010, $13,500,000 for fiscal year 2011, $14,000,000 for fiscal year 2012, $14,500,000 for fiscal year 2013, and $15,000,000 for fiscal year 2014.''.

**SEC. 2. INCREASED FLEXIBILITY FOR ARCHIVIST IN THE RECORDS CENTER REVOLVING FUND.**

Subsection (d) under the heading ''RECORDS CENTER REVOLVING FUND '' in title IV of the Independent Agencies Appropriations Act, 2000 (Public Law 106-58; 113 Stat. 460; 44 U.S.C. 2901 note), is amended—

(1) in paragraph (1), by striking ''not to exceed 4 percent'' and inserting ''determined by the Archivist of the United States''; and

(2) in paragraph (2), by striking ''Funds in excess of the 4 percent at the close of each fiscal year'' and inserting ''Any unobligated and unexpended balances in the Fund that the Archivist of the United States determines to be in excess of those needed for capital equipment or a reasonable operating reserve''.

**SEC. 3. GRANTS FOR ESTABLISHMENT OF STATE AND LOCAL DATABASES FOR RECORDS OF SERVITUDE, EMANCIPATION, AND POST-CIVIL WAR RECONSTRUCTION.**

Section 8 of the Presidential Historical Records Preservation Act of 2008 (44 U.S.C. 2504 note) is amended to read as follows:

**''SEC. 8. GRANTS FOR ESTABLISHMENT OF STATE AND LOCAL DATABASES FOR RECORDS OF SERVITUDE, EMANCIPATION, AND POST-CIVIL WAR RECONSTRUCTION.**

''(a) IN GENERAL.—The Archivist of the United States, after considering the advice and recommendations of the National Historical Publications and Records Commission, may make grants to States, colleges and universities, museums, libraries, and genealogical associations to preserve records and establish electronically searchable databases consisting of local records of servitude, emancipation, and post-Civil War reconstruction.

''(b) MAINTENANCE.—Any database established using a grant under this section shall be maintained by appropriate agencies or institutions designated by the Archivist of the United States.''.

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By Mr. FEINGOLD.

S. 2875. A bill to establish the Commission on Measures of Household Economic Security to conduct a study and submit a report containing recommendations to establish and report economic statistics that reflect the economic status and well-being of American households; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, our government agencies collect and report a range of economic information but much of what we see or hear is most suited to describing the general state of the country's economy. This information does not reflect what is happening in and what matters most to our families and the quality of our lives. For example, our national unemployment figures don't tell us that those who are employed may not have benefits, or that they are working two or three jobs to earn the income that they report, or that their mortgage debt and college loans are jeopardizing their ability to repay their credit card debt or their medical bills. By knowing and reporting this kind of information we can not only more accurately reflect what our families are experiencing economically, we can better inform policymakers about what matters most to people and the steps that need to be taken to address household economic needs and concerns.

To address this need I am re-introducing the Commission on Measures of Household Economic Security Act of 2009. The bill would establish a bipartisan congressional commission of 8 economic experts to look at existing government economic data and identify the possible need for new information, more accurate methodologies and better ways to report these economic measures to give a more accurate and reliable picture of the economic well being of American households. As part of their effort, the Commission will be asked to meet with representative groups of the public so that their views are taken into account in the Commission's recommendations.

In doing this, the Commission will look at such things as the current debt situation of American individuals and households, including categories of debt such as credit card debt, education related loans and mortgage payments; the movement of Americans between salaried jobs with benefits to single or multiple wage jobs with limited or no benefits with a comparison of income to include the value of benefits programs such as health insurance and retirement plans; the percentage of Americans who are covered by both employer-provided and individual health care plans and the extent of coverage per dollar paid by both employers and employees; the savings rate, including both standard savings plans and pension plans; the disparity in income distribution over time and between different demographic and geographic groups; and the breakdown of household expenditures between such categories as food, shelter, medical expenses, debt servicing, and energy.

In addition, the Commission will consider the relevance of certain non-market activities, like household production, education, and volunteer services that affect the economic well-being of households but are not measured or valued in currently reported economic statistics. As Robert F. Kennedy famously said, some of our economic indicators measure ''everything in short, except that which makes life worthwhile.'' We need to make an effort to value more than just our gross domestic product and sales receipts. We need to better measure and understand what matters to American households.

This effort to improve how we measure what matters in our economy is very much in the Wisconsin tradition of accountable good government. It was Senator Robert LaFollette, Jr. who, in 1932, introduced a resolution requiring the U.S. Government to establish a more scientific, specific and accurate set of measures of the health of the U.S. economy. From his request, Simon Kuznets, a University of Pennsylvania economics professor, developed the first set of national accounts which form the basis for today's measure of GDP and other economic indicators. Kuznets won the 1971 Nobel Prize in Economics ''for his empirically founded interpretation of economic growth which has led to new and deepened insight into the economic and social structure and process of development''. His work was the basis for much of the New Deal reform policies. Yet Kuznets specifically acknowledged that his measures were incomplete and did not go far enough to measure what may really matter. In his 1934 report to the Senate on his compilation of statistics associated with Gross National Product he concluded: ''The welfare of a nation can . . . scarcely be inferred from a measurement of national income as [so] defined. . . .'' This bill is intended to advance these earlier efforts to make our economic statistical measures more reflective of the welfare of our families and our nation.

The cost of this commission will be fully covered by amounts already authorized and appropriated to the Bureau of Labor Statistics. I urge my colleagues to support my legislation.

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By Ms. CANTWELL (for herself and Ms. COLLINS):

S. 2877. A bill to direct the Secretary of the Treasury to establish a program

to regulate the entry of fossil carbon into commerce in the United States to promote clean energy jobs and economic growth and avoid dangerous interference with the climate of the Earth, and for other purposes; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I send to the desk legislation on my behalf and Senator COLLINS', the Senator from Maine, dealing with putting a market signal on carbon so we can get off of carbon and move forward on a green energy economy that will create millions of jobs in America.

I know we are still on health care so I am not going to take a lot of time right now to talk about this because we in the next several weeks and months ahead are going to have a lot of time to talk about this issue. But I do want to say for my colleagues, as we are introducing this legislation: The American people have been on a roller coaster ride with energy prices. I know the Presiding Officer knows this because she comes from the Northeast and knows what home heating oil costs have done to her State and surrounding States. I know my colleague from Maine knows this as well. That is part of her motivation in joining me in this cause, I am sure. The American public cannot sustain having oil prices wreak havoc on our economy for the next 30 years.

We know from economists that sometime in the next 5 to 30 years we will be at peak oil, and once we are at peak oil, the cost to the U.S. economy will be even more extravagant. The American people want to know what we are going to do to transition off of that and do so in a respectable way. What they are not so interested in is a proposal that would have Wall Street come up with a funding source by doing speculative trading to continue the games that have been played for the last year or 2 years on various commodities that drove the economy into the ditch.

I find it interesting that today in the newspapers coming from Copenhagen, now they have decided that up to 90 percent of all market activity in the European trading markets was related to fraudulent activity. That tells us that trading markets already existing on carbon futures have had great deals of problems with manipulation. I don't think we need to repeat that. What we want to do instead is say, we are going to make sure that consumers get a check back to help them with their energy bills. We want to say we are going to protect them from the skyrocketing prices of energy, but we are going to transition off of fossil fuels and onto new sources of energy, of biofuels, of alternatives such as wind and solar, of things such as plug-in electric vehicles, of an electricity grid that can be more efficient and a smart two-way communications system.

In the end, our economy is going to be better. We are going to create more jobs. We are going to make sure that consumers are not held hostage by future huge energy spikes. If we do that, we are going to leave to the next generation a better situation. We will leave the planet Earth in better shape. But most importantly, we are going to take the U.S. economy, struggling to move ahead, and we are going to create thousands of jobs in the short term and millions of jobs in the next several years. That is good news, to think that the United States could become a leader in energy technology, that we are not going to be as dependent upon the Chinese for battery technology of the future as we are right now on Middle East oil.

I introduce this legislation with the most respect for my colleagues, Senators BOXER and KERRY, LIEBERMAN and MCCAIN, many of my colleagues have been involved in this issue for many decades, but to work across the aisle. If health care shows us anything, we have to cut down the amount of time it takes to move these important pieces of legislation by working together in an effort to show that we do understand the needs of the American public. We have to drive down their costs, not just on health care but on fuel as well. We have to give them economic opportunity for the future. Sending this market signal is the best way to create jobs and help protect consumers for the future.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I am pleased to join my colleague from Washington State, Senator CANTWELL, in introducing what I believe to be landmark legislation, the Carbon Limits and Energy for America's Renewal, or CLEAR Act. Let me commend the Senator for her leadership on this important issue.

One of the most appealing parts of this bill is it takes a fresh look at the issues facing our country in the area of developing alternative energy, promoting energy independence, and addressing climate change and the need for more green jobs in the economy. Indeed, this bill addresses the most significant energy and environmental challenges we face. It would help to reduce our dependence on foreign oil, promote alternative energy and energy conservation, and advance the goal of energy independence for our Nation.

The cost of gas and oil imposes a great burden on many Americans, particularly those living in large rural States such as the State of Maine. High gasoline prices have a disproportionate impact on Mainers who often have no choice but to travel long distances to their jobs, grocery stores, and doctors offices. This lessens the amount of money they have to spend on other necessities.

In addition, 80 percent of Mainers heat their homes with home heating oil. That is one of the highest percentages in the Nation. The State of Maine is one of the States most dependent on foreign oil of any State in the Nation. Our Nation must work together on comprehensive long-term actions that will stabilize gas and oil prices, help to prevent energy shortages, avoid those spikes when we are held hostage to foreign oil, and achieve national energy independence. This effort will require a stronger commitment to renewable energy sources such as wind energy, as well as energy efficiency and conservation.

The development and implementation of these new approaches to environmental stewardship and energy independence will also provide a powerful stimulus to our economy and the creation of green jobs. Like my colleague, I want the United States to lead the way on green technology, not lose our edge to China, for example.

In addition to advancing these goals, the CLEAR Act is the fairest climate change approach from the perspective of consumers. It would rebate 75 percent of the proceeds generated by the cap on carbon emissions directly to citizens. That is a tremendous advantage of this bill over alternative approaches such as the cap-and-trade bill.

I also share the concerns of my colleague from Washington State about the abuses we have seen in energy and agricultural markets, when speculators are allowed to participate in the market. That is why in our bill, which imposes an upstream cap on carbon, only the producers are allowed to participate in the trading. That is a far better approach that will guard against market manipulation and excessive speculation.

In the United States alone, emissions of the primary greenhouse gas carbon dioxide have risen more than 20 percent since 1990. Clearly climate change is a daunting environmental challenge, but we must develop solutions that do not impose a heavy burden on our economy, particularly during these difficult economic times. That is why I am pleased to join as the lead cosponsor of the CLEAR Act. Climate change legislation must protect consumers and industries that could be hit with higher energy prices. We must recognize that many of our citizens are struggling to afford their monthly energy bills now and cannot afford dramatically higher prices. We also must produce legislation that would provide predictability in the price of carbon emissions so that businesses can plan, invest, and create good jobs. Climate change legislation should encourage the adoption of energy efficiency measures and the further development of renewable energy.

I am very excited about the possibilities for the State of Maine because of its immense potential to develop offshore wind energy. Estimates are that the development of 5 gigawatts of offshore wind in Maine would be enough to power more than 1 million homes for a year. It could attract $20 billion of investment to the State of Maine and create more than 15,000 green energy jobs, jobs that are desperately needed in our State. The CLEAR Act would help to achieve all of those goals.

I could not support the bill that was passed to deal with climate change by the House of Representatives. Let me read a couple of the descriptions of that bill. The New York Times described it as ''fat with compromises, carve-outs, concessions, and out-and-out gifts.'' The Washington Post in an editorial described it as having pollution credits and revenue that were ''divvied up to the advantage of politically favored polluters.''

I do not believe this bill, which is a 2,000-page monstrosity, can garner the necessary 60 votes to proceed in the Senate. The CLEAR Act, by contrast, would help to move a stalled debate forward by offering a fairer, a more efficient, and a straightforward approach.

You have only to look at our bill. It is 39 pages long compared to 2,000 pages of the House-passed bill.

My full statement goes into detail on how the bill would work. I hope my colleagues will look closely at it. But let me talk about one part. That is in the CLEAR Act, 75 percent of the carbon auction revenues would be returned to consumers as tax free rebates. They wouldn't be lost to speculation or to $½ billion of fees every year to investment firms on Wall Street. No, 75 percent of those revenues would be returned on a per capita basis to consumers. That means that 80 percent of Americans would incur no net new cost under the CLEAR Act. The average Mainer would stand to actually gain $102 per year from the CLEAR Act. I can tell you, Mainers would welcome that. It would help them winterize their homes, meet their energy bills, invest in energy conservation and efficiency, or have a little more money to get by.

By contrast, under the House-passed cap-and-trade bill, the average citizen in this country would experience a net cost increase of $175 per year. That is a big difference and a big advantage of the Cantwell-Collins approach.

What about the other 25 percent of the auction revenues? What we would propose is that those would go to a trust fund to fund energy efficiency programs and renewable energy research and development, to provide incentives for forestry and agriculture practices that sequester carbon, to encourage practices that reduce other greenhouse gases, to help energy-efficient, energy-intensive manufacturers, and to assist low-income consumers. That fund would be called the Clean Energy Reinvestment Trust, the CERT fund. It would be subject to the annual appropriations process so that Congress could adapt assistance for climate-related activities on an annual basis rather than being locked into a complicated allocation scheme that may well favor special interests.

I am excited about this bill. It offers us a way forward to a green economy. It will help create jobs. It will alleviate the burden on consumers, particularly in New England, where the Presiding Officer and I live, as well as the Northwest. It makes sense. It is a commonsense approach. I hope my colleagues will consider joining the Senator from Washington and me on this important legislation.

Again, I commend Senator CANTWELL's leadership. She has done a great deal of work to come up with this approach, and I am excited to be joining her in this effort.

To reiterate, today I am pleased to join my colleague from Washington, Senator CANTWELL, in introducing landmark legislation, the Carbon Limits and Energy for America's Renewal, or CLEAR, Act.

This bill addresses the most significant energy and environmental challenges facing our country. It would help reduce our dependence on foreign oil, promote alternative energy and energy conservation, and advance the goal of energy independence for our Nation.

The costs of gas and oil impose a great burden on many Americans, particularly those living in large, rural States like Maine. High gasoline prices have a disproportionate impact on Mainers who often have to travel long distances to their jobs, doctors' offices, and grocery stores, which lessens the amount of money they have available to spend on other necessities. Also, 80 percent of Mainers heat their homes with home heating oil, one of the highest percentages in the Nation. Our Nation must work together on comprehensive, long-term actions that will stabilize gas and oil prices, help to prevent energy shortages, and achieve national energy independence. This effort will require a stronger commitment to renewable energy sources, such as wind energy, and energy efficiency and conservation.

The development and implementation of these new approaches to environmental stewardship and energy independence will also provide a powerful stimulus for our economy and the creation of ''green'' jobs.

In addition to advancing the goal of energy independence and creating green jobs, the CLEAR Act is the fairest climate change approach for consumers. It would rebate 75 percent of the proceeds generated by the cap on carbon directly to citizens.

According to recent reports from the Intergovernmental Panel on Climate Change, increases in greenhouse gas emissions have already increased global temperatures, and likely contributed to more extreme weather events such as droughts and floods. These emissions will continue to change the climate, causing warming in most regions of the world, and likely causing more droughts, floods, and many other problems.

In the United States alone, emissions of the primary greenhouse gas, carbon dioxide, have risen more than 20 percent since 1990. Climate change is the most daunting environmental challenge we face, and we must develop reasonable solutions to reduce our carbon emissions.

I have personally observed the dramatic effects of climate change and had the opportunity to be briefed by the preeminent experts, including University of Maine professor and National Academy of Sciences member George Denton. In 2006, on a trip to Antarctica and New Zealand, for example, I saw sites in New Zealand that had been buried by massive glaciers at the beginning of the 20th century, but are now ice free. Fifty percent of the glaciers in New Zealand have melted since 1860—an event unprecedented in the last 5,000 years. It was remarkable to stand in a place where some 140 years ago, I would have been covered in tens or hundreds of feet of ice, and then to look far up the mountainside and see how distant the edge of the ice is today.

The melting is even more dramatic in the Northern Hemisphere. In the last 30 years, the Arctic has lost sea ice cover over an area ten times as large as the State of Maine, and at this rate will be ice free by 2050. In 2005 in Barrow, AK, I witnessed a melting permafrost that is causing telephone poles, planted years ago, to lean over for the first time ever.

I also learned about the potential impact of sea level rise during my trips to these regions. If the west Antarctica ice sheet were to collapse, for example, sea level would rise 15 feet, flooding many coastal cities. In its 2007 report, the IPCC found that even with just gradual melting of ice sheets, the average predicted sea level rise by 2100 will be 1.6 feet, but could be as high as 1 meter, or almost 3 feet. In Maine a 1 meter rise in sea level would cause the loss of 20,000 acres of land, include 100 acres of downtown Portland, including Commercial Street. Already in the past 94 years, a 7-inch rise in sea level has been documented in Portland.

The solutions to these problems must not impose a heavy burden on our economy, particularly during these difficult economic times. That is why I am pleased to be the lead cosponsor of the CLEAR Act.

While we must take meaningful action to respond to climate change, it must be a balanced approach. Climate change legislation must protect consumers and industries that could be hit with higher energy prices. We must recognize that many of our citizens are struggling just to pay their monthly energy bills and cannot afford dramatically higher prices. Such legislation also must provide predictability so that businesses can plan, invest, and create jobs.

Climate change legislation should encourage adoption of energy efficiency measures and the further development of renewable energy, which could spur our economy and job creation. For example, Maine has immense potential to develop offshore wind energy. Estimates are that development of 5 gigawatts of offshore wind in Maine—

enough to power more than 1 million homes for a year—could attract $20 billion of investment to the State and create more than 15,000 green energy jobs that would be sustained over 30 years.

The CLEAR Act achieves all of these goals, whereas the bill passed by the House of Representatives earlier this year has been characterized by the Boston Globe as ''providing cushions for industry;'' ''fat with compromises, carve-outs, concessions and out-and-out gifts,'' a New York Times article by John Broder, June 30, 2009; and having pollution credits and revenue that were ''divvied up to the advantage of politically favored polluters,'' from the Washington Post editorial, June 26, 2009. This House bill could not garner the necessary 60 votes in the Senate. The CLEAR Act will help to move a stalled debate forward by offering a more efficient, straightforward approach.

Let me discuss how our bill would work. The CLEAR Act places an upstream cap on carbon entering the economy. The upstream cap on carbon would capture 96 percent of all carbon dioxide emissions, 93 percent of total annual U.S. greenhouse gas emissions by weight, and 82 percent of total annual U.S. greenhouse gas emissions by global warming potential.

The initial annual carbon budget under the cap would be set based on the amount of fossil carbon likely to be consumed by the U.S. economy in 2012, the year in which the CLEAR Act regulations would begin, based on projections by the Energy Information Administration. For the first 2 years, the cap would stay at the 2012 level to give companies time to adapt to the system. Starting in 2015, the carbon budget would be reduced annually along a schedule designed to achieve nearly an 80 percent reduction in 2005 level emissions by 2050.

The cap will recognize voluntary regional efforts like the Regional Greenhouse Gas Initiative, RGGI. RGGI is a cooperative effort by 10 northeast and mid-Atlantic States to limit greenhouse gas emissions. These 10 States have capped $CO_2$ emissions from the power sector and will require a 10-percent reduction in these emissions by 2018.

Coal companies, oil and gas producers, and oil and gas importers would have to buy permits or ''allowances'' for the carbon in their products. They would buy the permits in a monthly auction in which those companies would be the only ones allowed to participate. One hundred percent of the allowances would be auctioned; no free allowances are provided to special interests. Thus, the CLEAR Act does not provide special favors like the House bill.

Unlike the House bill, in the CLEAR Act, only the companies directly regulated by the legislation would participate in the auction. This avoids the huge potential for market manipulation and speculation to drive up carbon prices that exists in the House bill. Financial experts estimate that under the House bill, carbon permit trading could create a $3 trillion commodity market by 2020. Do we really want to have energy consumers subsidizing Wall Street traders?

In the CLEAR Act, 75 percent of the carbon auction revenues would be returned to consumers as tax-free rebates. Nationwide, this means 80 percent of Americans would incur no net costs under the CLEAR Act. The average Mainer would stand to gain $102 per year from the CLEAR Act. By contrast, under the House-passed cap and trade bill, the average citizen would experience a net cost increase of $175 per year.

The other 25 percent of the auction revenues generated under CLEAR would go into a trust fund to fund energy efficiency programs and renewable energy research and development, to provide incentives for forestry and agriculture practices that sequester carbon, to encourage practices that reduce other greenhouse gases, to help energy-intensive manufacturers, and to assist low-income consumers. The fund, called the Clean Energy Reinvestment Trust, CERT Fund, would be subject to the annual appropriations process. This would allow Congress to adapt assistance for climate-related activities on an annual basis, rather than being locked into a complicated allocation scheme that favors special interests.

I applaud the leadership of my colleague from Washington for developing this straightforward, effective and fair climate bill. I urge all my colleagues to consider joining us on this important legislation.

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By Mr. ROCKEFELLER (for himself, Mrs. HUTCHISON, Mr. KERRY, Ms. SNOWE, Mr. PRYOR, and Mr. WARNER):

S. 2879. A bill to direct the Federal Communications Commission to conduct a pilot program expanding the Lifeline Program to include broadband service, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce legislation that will enable more low-income households to receive broadband and its benefits.

Broadband has fundamentally changed the way Americans live their daily lives. It has changed how we do business, get information, find jobs, learn, communicate, and interact with Federal, State, and local governments. Over the next few years, we can only expect more innovation and more broadband applications that open doors to new opportunities and provide even more benefits to consumers.

While broadband has been more quickly deployed and adopted in predominantly urban areas, availability and adoption in rural areas has lagged behind. Low-income rural households are among the least likely to subscribe to broadband. At the same time, businesses and educational institutions, among others, have migrated many essential services and opportunities to the Internet. The result is that people without broadband, particularly in rural areas, are being left behind.

Today, 77 percent of Fortune 500 companies only accept job applications online. Seventy-eight percent of students regularly use the Internet for classroom work. Similarly, State, and local government agencies, as well as vital healthcare services, are increasingly migrating online, especially as budget cuts reduce the availability and quality of offline services.

All of this means that the children of families without broadband lose access to learning opportunities. Qualified workers lose access to jobs. Low-income Americans waste precious time—sometimes even having to take off from their jobs—in government offices, waiting for services that are otherwise available online.

This income-based digital divide is stark. Americans who earn less than $30,000 per year have a 50 percent lower rate of broadband adoption than those who earn $100,000 annually. What makes it worse is that, in some ways, low-income consumers are the ones who stand to benefit the most from affordable broadband access. Online job information and educational opportunities can provide low-income consumers with critical means to improve their lives and the lives of their children.

Like basic telephone service, broadband is quickly becoming a necessity. Consumers without access are at risk of becoming second class citizens in a growing digital world. The original Lifeline program recognized that telephone service was a critical part of everyday life and that low-income Americans needed to be connected to the world around them. What was true for telephony then is true for broadband now. That is why the Lifeline program at the FCC should be expanded to support broadband access for low-income households.

The legislation we introduce today creates a two-year pilot program to expand the FCC's Lifeline program by supporting broadband service for eligible low-income households. It also asks the FCC to provide Congress with a report on expanding the Link-Up program to assist with the costs of securing equipment, such as computers, needed to use broadband service.

We must make sure that we act now to bridge the divide that threatens to make low-income consumers second-class citizens. For this reason, I urge my colleagues to join me and support this legislation.

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## AMENDMENTS SUBMITTED AND PROPOSED

SA 3164. Mr. CASEY submitted an amendment intended to be proposed to amendment

SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table.

SA 3165. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3166. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3167. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3168. Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3169. Mr. CORNYN (for himself and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3170. Mr. PRYOR (for himself and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3171. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3172. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3173. Mr. MERKLEY (for himself and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3174. Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3175. Mr. SPECTER (for himself, Mr. BROWN, and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3176. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3177. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3178. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3179. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3180. Mr. GRASSLEY (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3181. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3182. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3183. Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3184. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3185. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3186. Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3187. Mr. WYDEN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3188. Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3189. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3190. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3191. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3192. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3193. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3194. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3195. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3196. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3197. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

SA 3198. Mr. CORNYN (for himself and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, supra; which was ordered to lie on the table.

## TEXT OF AMENDMENTS

**SA 3164.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 330, strike lines 7 through 11 and inserting the following:

''individual is—

''(i) a member of a recognized religious sect or division thereof which is described in section 1402(g)(1), and

''(ii) an adherent of established tenets or teachings of such sect or division as described in such section.

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**SA 3165.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1395, strike line 11 and all that follows through ''**SEC. 778.**'' on line 15 and insert the following:

**SEC. 5314. FELLOWSHIP TRAINING IN PUBLIC HEALTH.**

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 311 the following:

**''SEC. 311A.**

**SA 3166.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

**SEC. 3115. GAO STUDY AND REPORT ON MEDICARE BENEFICIARY ACCESS.**

(a) STUDY.—The Comptroller General of the United States (in this section referred to as the ''Comptroller General'') shall conduct a study on the ability of Medicare beneficiaries to fully access available health care services during the 5-year period following enactment of this Act. Such study shall include the following:

(1) A detailed analysis regarding levels of access to health care services for different groups or populations of Medicare beneficiaries, including a breakdown—

(A) by location, including rural areas (as defined in section 1886(d)(2)(D) of the Social Security Act), health professional shortage areas (as designated under section 332 of the Public Health Service Act), medically underserved communities (as defined in section 799B(6) of such Act), and medically underserved populations (as defined in section 330(b)(3) of such Act);

(B) by type of health care service, including physician services and primary care services; and

(C) by any other measure determined appropriate by the Comptroller General.

(2) A summary that identifies—

(A) any groups or populations of Medicare beneficiaries that lack adequate access to health care services; and

(B) any types of health care services that are not fully accessible to Medicare beneficiaries.

(b) REPORT.—

(1) INTERIM REPORT.—Not later than 30 months after the date of enactment of this Act, the Comptroller General shall prepare and submit an interim report to Congress that contains the preliminary results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(2) FINAL REPORT.—Not later than 60 months after the date of enactment of this Act, the Comptroller General shall prepare and submit a final report to Congress that contains the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

(c) MEDICARE BENEFICIARY.—In this section, the term ''Medicare beneficiary'' means an individual entitled to benefits under part A of title XVIII of the Social Security Act, enrolled under part B of such title, or both.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

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**SA 3167.** Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1413 and insert the following:

**SEC. 1413. STREAMLINING OF PROCEDURES FOR ENROLLMENT THROUGH AN EXCHANGE AND STATE MEDICAID, CHIP, AND HEALTH SUBSIDY PROGRAMS.**

(a) IN GENERAL.—The Secretary shall establish a system meeting the requirements of this section under which residents of each State may apply for enrollment in, receive a determination of eligibility for participation in, and continue participation in, applicable State health subsidy programs. Such system shall ensure that if an individual applying to an Exchange, to a State Medicaid program under title XIX of the Social Security Act, or to a State children's health insurance program (CHIP) under title XXI of such Act, is found to be ineligible for the program to which the individual applied, the individual shall be screened for eligibility for all other potentially applicable such programs and shall be enrolled in the program for which the individual qualifies.

(b) REQUIREMENTS RELATING TO FORMS AND NOTICE.—

(1) REQUIREMENTS RELATING TO FORMS.—

(A) IN GENERAL.—The Secretary shall develop and provide to each State a single, streamlined form that—

(i) may be used to apply for all applicable State health subsidy programs within the State;

(ii) may be filed online, in person, by mail, or by telephone;

(iii) may be filed with an Exchange or with State officials operating one of the other applicable State health subsidy programs; and

(iv) is structured to maximize an applicant's ability to complete the form satisfactorily, taking into account the characteristics of individuals who qualify for applicable State health subsidy programs.

(B) STATE AUTHORITY TO ESTABLISH FORM.—A State may develop and use its own single, streamlined form as an alternative to the form developed under subparagraph (A) if the alternative form is consistent with standards promulgated by the Secretary under this section.

(C) SUPPLEMENTAL ELIGIBILITY FORMS.—The Secretary may allow a State to use a supplemental or alternative form in the case of individuals who apply for eligibility that is not determined on the basis of the household income (as defined in section 36B of the Internal Revenue Code of 1986).

(D) RELEVANCE.—The forms described in subparagraphs (A) and (B) shall not require the applicant to answer any questions that are irrelevant to establishing eligibility for applicable State health subsidy programs. The Secretary shall establish procedures that avoid any need for such requirements, which shall include determining the amounts expended for medical assistance that are described in subsection (y)(1) of section 1905 of the Social Security Act (as added by section 2001(a)(3) of this Act) through the use of the post-enrollment procedures described in section 1903(u)(1)(C) of the Social Security Act.

(2) NOTICE.—The Secretary shall provide that an applicant filing a form under paragraph (1) shall receive notice of eligibility for an applicable State health subsidy program without any need to provide additional information or paperwork unless such information or paperwork is specifically required by law when information provided on the form is inconsistent with data used for the electronic verification under paragraph (3) or is otherwise insufficient to determine eligibility.

(c) REQUIREMENTS RELATING TO ELIGIBILITY BASED ON DATA EXCHANGES.—

(1) DEVELOPMENT OF SECURE INTERFACES.—Each State shall develop for all applicable State health subsidy programs a secure, electronic interface allowing an exchange of data (including information contained in the application forms described in subsection (b)) that allows a determination of eligibility for all such programs based on a single application. Such interface shall be compatible with the method established for data verification under section 1411(c)(4).

(2) DATA MATCHING PROGRAM.—Each applicable State health subsidy program shall participate in a data matching arrangement for determining eligibility for participation in the program under paragraph (3) that—

(A) provides access to data described in paragraph (3);

(B) applies only to individuals who—

(i) receive assistance from an applicable State health subsidy program; or

(ii) apply for such assistance—

(I) by filing a form described in subsection (b); or

(II) notwithstanding section 1411(b), by requesting a determination of eligibility and authorizing disclosure of the information described in paragraph (3) to applicable State health coverage subsidy programs for purposes of determining and establishing eligibility; and

(C) is consistent with standards promulgated by the Secretary, including the privacy and data security safeguards described in section 1942 of the Social Security Act or that are otherwise applicable to such programs.

(3) DETERMINATION OF ELIGIBILITY.—

(A) IN GENERAL.—Each applicable State health subsidy program shall, to the maximum extent practicable—

(i) establish, verify, and update eligibility for participation in the program using the data matching arrangement under paragraph (2); and

(ii) determine such eligibility on the basis of reliable, third party data, including information described in sections 1137, 453(i), and 1942(a) of the Social Security Act, obtained through such arrangement, provided that if such data do not establish an individual's eligibility for medical assistance under title XIX of the Social Security Act, the rules described in section 1902(e)(14)(H) of such Act shall apply to such individual.

(B) EXCEPTION.—This paragraph shall not apply in circumstances with respect to which the Secretary determines that the administrative and other costs of use of the data matching arrangement under paragraph (2) outweigh its expected gains in accuracy, efficiency, and program participation.

(4) SECRETARIAL STANDARDS.—The Secretary shall, after consultation with persons in possession of the data to be matched and representatives of applicable State health subsidy programs, promulgate standards governing the timing, contents, and procedures for data matching described in this subsection. Such standards shall take into account administrative and other costs and the value of data matching to the establishment, verification, and updating of eligibility for applicable State health subsidy programs.

(d) ADMINISTRATIVE AUTHORITY.—

(1) AGREEMENTS.—Subject to section 1411 and section 6103(l)(21) of the Internal Revenue Code of 1986 and any other requirement providing safeguards of privacy and data integrity, the Secretary may establish model

agreements, and enter into agreements, for the sharing of data under this section.

(2) AUTHORITY OF EXCHANGE TO CONTRACT OUT.—Nothing in this section shall be construed to—

(A) prohibit contractual arrangements through which a State medicaid agency determines eligibility for all applicable State health subsidy programs, but only if such agency complies with the Secretary's requirements ensuring reduced administrative costs, eligibility errors, and disruptions in coverage; or

(B) change any requirement under title XIX that eligibility for participation in a State's medicaid program must be determined by a public agency.

(e) APPLICABLE STATE HEALTH SUBSIDY PROGRAM.—In this section, the term ''applicable State health subsidy program'' means—

(1) the program under this title for the determination of eligibility for premium tax credits under section 36B of the Internal Revenue Code of 1986 and cost-sharing reductions under section 1402;

(2) a State medicaid program under title XIX of the Social Security Act;

(3) a State children's health insurance program (CHIP) under title XXI of such Act; and

(4) a State program under section 1331 establishing qualified basic health plans.

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**SA 3168.** Mr. CASEY (for himself and Mrs. GILLIBRAND) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 466, between lines 5 and 6, insert the following:

**SEC. 2305. OPTIONAL COVERAGE OF NURSE HOME VISITATION SERVICES.**

(a) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d), as amended by sections 2001(a)(3), 2006, and 2301(a)(1), is amended—

(1) in subsection (a)—

(A) in paragraph (28), by striking ''and'' at the end;

(B) by redesignating paragraph (29) as paragraph (30); and

(C) by inserting after paragraph (28) the following new paragraph:

''(29) nurse home visitation services (as defined in subsection (z)); and''; and

(2) by inserting after subsection (y) the following new subsection:

''(z) The term 'nurse home visitation services' means voluntary home visits that are provided by trained nurses to a family with a first-time pregnant woman, or a child (under 2 years of age), who is eligible for medical assistance under this title, but only, to the extent determined by the Secretary based upon evidence, that such services are effective in achieving 1 or more of the following:

''(1) Improving maternal or child health and pregnancy outcomes or increasing birth intervals between pregnancies.

''(2) Reducing the incidence of child abuse, neglect, and injury, improving family stability (including reduction in the incidence of intimate partner violence), or reducing maternal and child involvement in the criminal justice system.

''(3) Increasing economic self-sufficiency, employment advancement, school-readiness, and educational achievement, or reducing dependence on public assistance.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2010.

(c) CONSTRUCTION.—Nothing in the amendments made by this section shall be construed as affecting the ability of a State under title XIX or XXI of the Social Security Act to provide nurse home visitation services as part of another class of items and services falling within the definition of medical assistance or child health assistance under the respective title, or as an administrative expenditure for which payment is made under section 1903(a) or 2105(a) of such Act, respectively, on or after the date of the enactment of this Act.

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**SA 3169.** Mr. CORNYN (for himself and Mr. COBURN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 6001.

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**SA 3170.** Mr. PRYOR (for himself and Mr. BAYH) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 828, between lines 3 and 4, insert the following:

**SEC. 3130. RESTORING STATE AUTHORITY TO WAIVE THE 35-MILE RULE FOR MEDICARE CRITICAL ACCESS HOSPITAL DESIGNATIONS.**

Section 1820(c)(2)(B)(i)(II) of the Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)(i)(II)) is amended by inserting ''or on or after the date of enactment of the Patient Protection and Affordable Care Act'' after ''January 1, 2006,''.

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**SA 3171.** Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1999, between lines 20 and 21, insert the following:

**SEC. 9005A. ANNUAL ROLLOVER OF HEALTH FSA BALANCES.**

(a) IN GENERAL.—Subsection (i) of section 125 of the Internal Revenue Code of 1986, as added by section 9005(a)(2), is amended—

(1) by striking all matter before ''if a benefit'' and inserting the following:

''(i) SPECIAL RULES APPLICABLE TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

''(1) LIMITATION ON CONTRIBUTIONS TO HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—For purposes of this section,'', and

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

''(2) ALLOWANCE OF CARRYOVER OF UNUSED AMOUNTS IN HEALTH FLEXIBLE SPENDING ARRANGEMENTS.—

''(A) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because under the plan or arrangement a participant is permitted access to any unused amounts attributable to salary reduction contributions under such plan or arrangement in the manner provided under subparagraph (B).

''(B) CARRYOVER OF UNUSED AMOUNTS.—A plan or arrangement may permit a participant in a health flexible spending arrangement to elect to carry over so much of the unused amounts attributable to salary reduction contributions under such plan or arrangement as of the close of any calendar year as does not exceed $1,000 to the immediately succeeding calendar year.

''(C) AMOUNTS NOT DEFERRED COMPENSATION.—No amount shall be treated as deferred compensation for purposes of this title by reason of any carryover under this paragraph.

''(D) COORDINATION WITH CONTRIBUTION LIMIT.—The maximum amount which may be contributed to a health flexible spending arrangement under paragraph (1) for any calendar year to which an unused amount is carried over under this paragraph shall be reduced by such amount.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning after December 31, 2010.

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**SA 3172.** Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 18, between lines 15 and 16, insert the following:

**''SEC. 2713A. COVERAGE OF CERTAIN CARE.**

''A group health plan and a health insurance issuer offering group or individual health insurance coverage shall provide coverage for wound-care supplies that are medically necessary for the treatment of epidermolysis bullosa and are administered under the direction of a physician.''.

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**SA 3173.** Mr. MERKLEY (for himself and Mr. FRANKEN) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 354, between lines 2 and 3, insert the following:

(D) APPLICATION TO CONSTRUCTION INDUSTRY EMPLOYERS.—In the case of any employer the substantial annual gross receipts of which are attributable to the construction industry—

(i) subparagraph (A) shall be applied by substituting ''who employed an average of at least 5 full-time employees on business days during the preceeding calendar year or whose annual payroll expenses exceed $250,000 for such preceeding calendar year'' for ''who employed an average of at least 50 full-time employees on business days during the preceeding calendar year'', and

(ii) subparagraph (B) shall be applied by substituting ''5'' for ''50''.

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**SA 3174.** Ms. SNOWE submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At after title IX, insert the following:

**TITLE X—HEALTH CARE REFORM OVERSIGHT COMMITTEE**

**SEC. 10001. HEALTH CARE REFORM OVERSIGHT COMMITTEE.**

(a) ESTABLISHMENT.—There is established a committee to be known as the Health Care Reform Oversight Committee (referred to in this section as the ''Committee''), for the purpose of maintaining close oversight of the implementation of the requirements of this Act (including the amendments made by this Act), including with regard to the affordability criteria set forth in this Act, the impact of this Act on small businesses, and pricing trends resulting from implementation of this Act.

(b) MEMBERSHIP.—The Committee shall be composed of 12 members, selected by the President pro tempore of the Senate and the Speaker of the House of Representatives, in consultation with the majority and minority leaders of the Senate and of the House of Representatives, from among members of the public experienced in health care administration, tax policy, small business, actuarial science, health insurance plan design or sales, or a profession that would lend credibility to the work of the Committee. Not more than 3 members of the Committee may be Federal employees.

(c) CHAIRPERSON.—The Committee shall select a Chairperson from among its members.

(d) MEETINGS.—The Committee shall meet at the call of the chairperson, or as voted by 7 members, as is necessary to maintain close oversight of the implementation of the requirements of this Act (including the amendments made by this Act), to address specific problems raised by such implementation, or to address constituent concerns.

(e) QUORUM.—A quorum shall consist of a total of 7 members of the Committee, except that a total of 5 members shall be present to conduct hearings, unless such requirement that 5 members be present to conduct hearings is waived by a majority of the Committee.

(f) DUTIES OF THE COMMITTEE.—The Committee shall provide close oversight of all aspects of the requirements of this Act, including the amendments made by this Act.

(g) POWERS OF THE COMMITTEE.—

(1) HEARINGS.—The Committee may, for the purpose of carrying out this section—

(A) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Committee considers advisable.

(2) REPORTS AND RECOMMENDATIONS.—The Committee may issues reports and findings as it deems appropriate, including offering suggestions for legislation to improve the requirements and activities under this Act (including the amendments made by this Act).

(3) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under paragraph (1) shall bear the signature of the Chairperson of the Committee and shall be served by any person or class of persons designated by the Chairperson for that purpose.

(B) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt that court.

(4) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Committee. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Committee.

(5) INFORMATION FROM FEDERAL AGENCIES.—The Committee may secure directly from any Federal department or agency such information as the Committee considers necessary to carry out this Act. Upon request of the Chairperson of the Committee, or of another member of the Committee representing a majority vote, the head of such department or agency shall furnish such information to the Committee.

(6) POSTAL SERVICES.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(7) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

(h) COMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Each member of the Committee who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Committee. All members of the Committee who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) TRAVEL EXPENSES.—The members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Committee.

(i) TERMINATION OF THE COMMITTEE.—The Committee shall terminate 5 years after the date of enactment of this Act.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out this section.

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**SA 3175.** Mr. SPECTER (for himself, Mr. BROWN, and Mr. CASEY) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 816, after line 20, insert the following:

**SEC. 3115. EXCLUSION OF CUSTOMARY PROMPT PAY DISCOUNTS EXTENDED TO WHOLESALERS FROM MANUFACTURER'S AVERAGE SALES PRICE FOR PAYMENTS FOR DRUGS AND BIOLOGICALS UNDER MEDICARE PART B.**

Section 1847A(c)(3) of the Social Security Act (42 U.S.C. 1395w–3a(c)(3)) is amended—

(1) in the first sentence, by inserting after ''prompt pay discounts'' the following: ''(other than, for drugs and biologicals that are sold on or after January 1, 2011, and before January 1, 2016, customary prompt pay discounts extended to wholesalers, but only to the extent such discounts do not exceed 2 percent of the wholesale acquisition cost)''; and

(2) in the second sentence, by inserting after ''other price concessions'' the following: ''(other than, for drugs and biologicals that are sold on or after January 1, 2011, and before January 1, 2016, customary prompt pay discounts extended to wholesalers, but only to the extent such discounts do not exceed 2 percent of the wholesale acquisition cost)''.

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**SA 3176.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 334, between lines 18 and 19, insert the following:

''(E) SPECIAL RULE FOR INDIVIDUALS BETWEEN THE AGES OF 55 AND 64.—

''(i) IN GENERAL.—In the case of an applicable individual who has attained the age of 55 but has not attained the age of 65 before the beginning of a calendar year, this paragraph shall be applied to such individual for months during such calendar year by substituting '5 percent' for '8 percent' in subparagraphs (A) and (D).

''(ii) USE OF INCREASED FEDERAL FUNDS.—

''(I) IN GENERAL.—The amount available for any calendar year for expenditure under the early retiree reinsurance program under section 1102 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human Services estimates under subclause (II) for the calendar year. Notwithstanding section 1102(a)(1) of such Act, amounts made available under this subclause for any calendar year after 2014 may be used to make payments under such reinsurance program.

''(II) ESTIMATES.—The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of clause (i). The sum of such amounts (expressed as a positive number)

shall be the amount taken into account under subclause (I). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

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**SA 3177.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 336, between lines 16 and 17, insert the following:

''(6) COLLEGE STUDENTS.—

''(A) IN GENERAL.—Any applicable individual for any month which occurs within an academic period during which the individual is a student (whether full-time or part-time) who meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)) at an institution of higher education (including a community college or trade school) described in such section. For purposes of the preceding sentence, any month between 2 consecutive academic periods shall be treated as occurring during an academic period.

''(B) USE OF INCREASED FEDERAL FUNDS.—

''(i) IN GENERAL.—The amount available for any calendar year for expenditure under the reinsurance program under section 1341 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human Services estimates under clause (11) for the calendar year. Notwithstanding section 1341(b)(4) of such Act, amounts made available under this subclause for any calendar year after 2018 may be used to make payments under any reinsurance program of a State in the individual market in effect during such calendar year.

''(ii) ESTIMATES.—The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of subparagraph (A). The sum of such amounts (expressed as a positive number) shall be the amount taken into account under clause (i). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

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**SA 3178.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 156, beginning with line 4, strike all through page 157, line 7, and insert the following:

(D) PRESIDENT, VICE PRESIDENT, MEMBERS OF CONGRESS, POLITICAL APPOINTEES, AND CONGRESSIONAL STAFF IN THE EXCHANGE.—

(i) IN GENERAL.—Notwithstanding chapter 89 of title 5, United States Code, or any provision of this title—

(I) the President, Vice President, each Member of Congress, each political appointee, and each Congressional employee shall be treated as a qualified individual entitled to the right under this paragraph to enroll in a qualified health plan in the individual market offered through an Exchange in the State in which the individual resides; and

(II) any employer contribution under such chapter on behalf of the President, Vice President, any Member of Congress, any political appointee, and any Congressional employee may be paid only to the issuer of a qualified health plan in which the individual enrolled in through such Exchange and not to the issuer of a plan offered through the Federal employees health benefit program under such chapter.

(ii) PAYMENTS BY FEDERAL GOVERNMENT.—The Secretary, in consultation with the Director of the Office of Personnel Management, shall establish procedures under which—

(I) the employer contributions under such chapter on behalf of the President, Vice President, and each political appointee are determined and actuarially adjusted for age; and

(II) the employer contributions may be made directly to an Exchange for payment to an issuer.

(iii) POLITICAL APPOINTEE.—In this subparagraph, the term ''political appointee'' means any individual who—

(I) is employed in a position described under sections 5312 through 5316 of title 5, United States Code, (relating to the Executive Schedule);

(II) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5, United States Code; or

(III) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(iv) CONGRESSIONAL EMPLOYEE.—In this subparagraph, the term ''Congressional employee'' means an employee whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

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**SA 3179.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 334, between lines 18 and 19, insert the following:

''(E) SPECIAL RULE FOR INDIVIDUALS UNDER AGE 30.—

''(i) IN GENERAL.—In the case of an applicable individual who has not attained age 30 before the beginning of a calendar year, this paragraph shall be applied to such individual for months during such calendar year by substituting '5 percent' for '8 percent' in subparagraphs (A) and (D).

''(ii) USE OF INCREASED FEDERAL FUNDS.—

''(I) IN GENERAL.—The amount available for any calendar year for expenditure under the reinsurance program under section 1341 of the Patient Protection and Affordable Care Act shall be increased by the amount the Secretary of Health and Human Services estimates under subclause (II) for the calendar year. Notwithstanding section 1341(b)(4) of such Act, amounts made available under this subclause for any calendar year after 2018 may be used to make payments under any reinsurance program of a State in the individual market in effect during such calendar year.

''(II) ESTIMATES.—The Secretary of Health and Human Services, in consultation with the Secretary, shall estimate for each calendar year after 2013 the net increase (if any) in Federal revenues, and the net decrease (if any) in Federal outlays, by reason of the application of clause (i). The sum of such amounts (expressed as a positive number) shall be the amount taken into account under subclause (I). The Secretary shall adjust the estimate for any calendar year to correct any errors in an estimate for any preceding calendar year.

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**SA 3180.** Mr. GRASSLEY (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1053, between lines 2 and 3, insert the following:

**SEC. 3403A. PROTECTING SENIORS FROM HIGHER PREMIUMS, REDUCED BENEFITS, AND RATIONING OF LIFE-SAVING CARE UNDER MEDICARE PARTS C AND D.**

Section 1899A(c)(2)(A) of the Social Security Act, as added by section 3403, is amended—

(1) in clause (ii), by striking ''under section 1818, 1818A, or 1839''; and

(2) by striking clause (iv).

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**SA 3181.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 909, strike line 21 and all that follows through page 910, line 19.

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**SA 3182.** Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

## TITLE X—ENSURING THAT SAVINGS FROM MEDICAL CARE ACCESS PROTECTION ARE USED TO REDUCE THE COVERAGE GAP UNDER MEDICARE PART D

### Subtitle A—Reducing the Coverage Gap Under Medicare Part D

**SEC. 10001. REDUCING THE COVERAGE GAP.**

Section 1860D–2(b) of the Social Security Act (42 U.S.C. 1395w–102(b)), as amended by section 3315, is further amended—

(1) in paragraph (3)(A), by striking ''and (7)'' and inserting '', (7), and (8)'';

(2) in paragraph (7), by striking subparagraph (C); and

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

''(8) INCREASE IN INITIAL COVERAGE LIMIT IN SUBSEQUENT YEARS.—

''(A) IN GENERAL.—For plan years beginning on or after January 1, 2011, the initial coverage limit described in paragraph (3)(B) otherwise applicable shall be increased by an amount which the Chief Actuary of the Centers for Medicare & Medicaid Services determines is equal to the estimated amount of savings during the plan year as a result of the provisions of the Medical Care Access Protection Act of 2009.

''(B) CONSIDERATIONS.—In determining the amount of the increase under subparagraph (A) for a plan year, the Secretary shall take into account—

''(i) any increase under such paragraph during the preceding year or years; and

''(ii) any estimated increase in utilization as a result of the application of this paragraph.

''(C) APPLICATION.—The provisions of subparagraph (B) of paragraph (7) shall apply to the application of subparagraph (A) of this subparagraph in the same manner as such provisions apply to the application of subparagraph (A) of paragraph (7).''.

### Subtitle B—Medical Care Access Protection

**SEC. 10101. SHORT TITLE.**

This subtitle may be cited as the ''Medical Care Access Protection Act of 2009'' or the ''MCAP Act''.

**SEC. 10102. FINDINGS AND PURPOSE.**

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) EFFECT ON FEDERAL SPENDING.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) PURPOSE.—It is the purpose of this subtitle to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;

(2) reduce the incidence of ''defensive medicine'' and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

**SEC. 10103. DEFINITIONS.**

In this subtitle:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term ''alternative dispute resolution system'' or ''ADR'' means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.

(2) CLAIMANT.—The term ''claimant'' means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term ''collateral source benefits'' means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers' compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term ''compensatory damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term ''contingent fee'' includes all compensation to any person or persons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) ECONOMIC DAMAGES.—The term ''economic damages'' means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) HEALTH CARE GOODS OR SERVICES.—The term ''health care goods or services'' means any goods or services provided by a health care institution, provider, or by any individual working under the supervision of a health care provider, that relates to the diagnosis, prevention, care, or treatment of any human disease or impairment, or the assessment of the health of human beings.

(8) HEALTH CARE INSTITUTION.—The term ''health care institution'' means any entity licensed under Federal or State law to provide health care services (including but not limited to ambulatory surgical centers, assisted living facilities, emergency medical services providers, hospices, hospitals and hospital systems, nursing homes, or other entities licensed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term ''health care lawsuit'' means any health care liability claim concerning the provision of health care goods or services affecting interstate commerce, or any health care liability action concerning the provision of (or the failure to provide) health care goods or services affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of claimants, plaintiffs, defendants, or other parties, or the number of claims or causes of action, in which the claimant alleges a health care liability claim.

(10) HEALTH CARE LIABILITY ACTION.—The term ''health care liability action'' means a civil action brought in a State or Federal Court or pursuant to an alternative dispute resolution system, against a health care provider or a health care institution regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action, in which the claimant alleges a health care liability claim.

(11) HEALTH CARE LIABILITY CLAIM.—The term ''health care liability claim'' means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) HEALTH CARE PROVIDER.—

(A) IN GENERAL.—The term ''health care provider'' means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be

licensed, registered, or certified to provide health care services, and being either so licensed, registered, or certified, or exempted from such requirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this subtitle, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited liability partnership formed by a group of physicians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under subparagraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term ''malicious intent to injure'' means intentionally causing or attempting to cause physical injury other than providing health care goods or services.

(14) NONECONOMIC DAMAGES.—The term ''noneconomic damages'' means damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(15) PUNITIVE DAMAGES.—The term ''punitive damages'' means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) RECOVERY.—The term ''recovery'' means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys' office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) STATE.—The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

**SEC. 10104. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

(a) IN GENERAL.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) GENERAL EXCEPTION.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) MINORS.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) RULE 11 SANCTIONS.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this subtitle applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys' fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

**SEC. 10105. COMPENSATING PATIENT INJURY.**

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any health care lawsuit, nothing in this subtitle shall limit the recovery by a claimant of the full amount of the available economic damages, notwithstanding the limitation contained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered against a health care provider, the amount of noneconomic damages recovered from the provider, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties other than a health care institution against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered against a single health care institution, the amount of noneconomic damages recovered from the institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence.

(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party's several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party's percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

**SEC. 10106. MAXIMIZING PATIENT RECOVERY.**

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants.

(2) CONTINGENCY FEES.—

(A) IN GENERAL.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) LIMITATION.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) 40 percent of the first $50,000 recovered by the claimant(s).

(ii) 33⅓ percent of the next $50,000 recovered by the claimant(s).

(iii) 25 percent of the next $500,000 recovered by the claimant(s).

(iv) 15 percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—

(1) IN GENERAL.—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) MINORS.—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

(c) EXPERT WITNESSES.—

(1) REQUIREMENT.—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, diagnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved

treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.

(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

**SEC. 10107. ADDITIONAL HEALTH BENEFITS.**

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

**SEC. 10108. PUNITIVE DAMAGES.**

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer.

(2) FILING OF LAWSUIT.—No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a motion by the claimant and after a finding by the court, upon review of supporting and opposing affidavits or after a hearing, after weighing the evidence, that the claimant has established by a substantial probability that the claimant will prevail on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of any party in a health care lawsuit, the trier of fact shall consider in a separate proceeding—

(A) whether punitive damages are to be awarded and the amount of such award; and

(B) the amount of punitive damages following a determination of punitive liability.

If a separate proceeding is requested, evidence relevant only to the claim for punitive damages, as determined by applicable State law, shall be inadmissible in any proceeding to determine whether compensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care lawsuit where no judgment for compensatory damages is rendered against a person, no punitive damages may be awarded with respect to the claim in such lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAMAGES.—

(1) FACTORS CONSIDERED.—In determining the amount of punitive damages under this section, the trier of fact shall consider only the following:

(A) the severity of the harm caused by the conduct of such party;

(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.

(2) MEDICAL PRODUCT.—The term ''medical product'' means a drug or device intended for humans. The terms ''drug'' and ''device'' have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

**SEC. 10109. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.**

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this subtitle.

**SEC. 10110. EFFECT ON OTHER LAWS.**

(a) GENERAL VACCINE INJURY.—

(1) IN GENERAL.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such title XXI shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(b) SMALLPOX VACCINE INJURY.—

(1) IN GENERAL.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this subtitle shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this subtitle in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this subtitle or otherwise applicable law (as determined under this subtitle) will apply to such aspect of such action.

(c) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this subtitle shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

**SEC. 10111. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.**

(a) HEALTH CARE LAWSUITS.—The provisions governing health care lawsuits set forth in this subtitle shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this subtitle. The provisions governing health care lawsuits set forth in this subtitle supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this subtitle; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) PREEMPTION OF CERTAIN STATE LAWS.—No provision of this subtitle shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this subtitle, notwithstanding section 10105(a).

(c) PROTECTION OF STATE'S RIGHTS AND OTHER LAWS.—

(1) IN GENERAL.—Any issue that is not governed by a provision of law established by or under this subtitle (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this subtitle;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

**SEC. 10112. APPLICABILITY; EFFECTIVE DATE.**

This subtitle shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this Act shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.

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**SA 3183.** Mr. BAUCUS submitted an amendment intended to be proposed by him to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

**SEC. ___. PROTECTING MIDDLE CLASS FAMILIES FROM TAX INCREASES.**

It is the sense of the Senate that the Senate should reject any procedural maneuver that would raise taxes on middle class families, such as a motion to commit the pending legislation to the Committee on Finance, which is designed to kill legislation that provides tax cuts for American workers and families, including the affordability tax credit and the small business tax credit.

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**SA 3184.** Mr. CASEY submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place in title IX, insert the following:

**Subtitle—Expansion of Adoption Credit and Adoption Assistance Programs**

**SEC. __01. EXPANSION OF ADOPTION CREDIT AND ADOPTION ASSISTANCE PROGRAMS.**

(a) INCREASE IN DOLLAR LIMITATION.—

(1) ADOPTION CREDIT.—

(A) IN GENERAL.—Paragraph (1) of section 23(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking ''$10,000'' and inserting ''$15,000''.

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (3) of section 23(a) of such Code (relating to $10,000 credit for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking ''$10,000'' and inserting ''$15,000'', and

(ii) in the heading by striking ''$10,000'' and inserting ''$15,000''.

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (h) of section 23 of such Code (relating to adjustments for inflation) is amended to read as follows:

''(h) ADJUSTMENTS FOR INFLATION.—

''(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(3) and (b)(1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

''(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A)(i) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''.

(2) ADOPTION ASSISTANCE PROGRAMS.—

(A) IN GENERAL.—Paragraph (1) of section 137(b) of the Internal Revenue Code of 1986 (relating to dollar limitation) is amended by striking ''$10,000'' and inserting ''$15,000''.

(B) CHILD WITH SPECIAL NEEDS.—Paragraph (2) of section 137(a) of such Code (relating to $10,000 exclusion for adoption of child with special needs regardless of expenses) is amended—

(i) in the text by striking ''$10,000'' and inserting ''$15,000'', and

(ii) in the heading by striking ''$10,000'' and inserting ''$15,000''.

(C) CONFORMING AMENDMENT TO INFLATION ADJUSTMENT.—Subsection (f) of section 137 of such Code (relating to adjustments for inflation) is amended to read as follows:

''(f) ADJUSTMENTS FOR INFLATION.—

''(1) DOLLAR LIMITATIONS.—In the case of a taxable year beginning after December 31, 2009, each of the dollar amounts in subsections (a)(2) and (b)(1) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2008' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.

''(2) INCOME LIMITATION.—In the case of a taxable year beginning after December 31, 2002, the dollar amount in subsection (b)(2)(A) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph thereof.

If any amount as increased under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10.''.

(b) CREDIT MADE REFUNDABLE.—

(1) CREDIT MOVED TO SUBPART RELATING TO REFUNDABLE CREDITS.—The Internal Revenue Code of 1986 is amended—

(A) by redesignating section 23, as amended by subsection (a), as section 36B, and

(B) by moving section 36B (as so redesignated) from subpart A of part IV of subchapter A of chapter 1 to the location immediately before section 37 in subpart C of part IV of subchapter A of chapter 1.

(2) CONFORMING AMENDMENTS.—

(A) Section 24(b)(3)(B) of such Code is amended by striking ''23,''.

(B) Section 25(e)(1)(C) of such Code is amended by striking ''23,'' both places it appears.

(C) Section 25A(i)(5)(B) of such Code is amended by striking ''23, 25D,'' and inserting ''25D''.

(D) Section 25B(g)(2) of such Code is amended by striking ''23,''.

(E) Section 26(a)(1) of such Code is amended by striking ''23,''.

(F) Section 30(c)(2)(B)(ii) of such Code is amended by striking ''23, 25D,'' and inserting ''25D''.

(G) Section 30B(g)(2)(B)(ii) of such Code is amended by striking ''23,''.

(H) Section 30D(c)(2)(B)(ii) of such Code is amended by striking ''sections 23 and'' and inserting ''section''.

(I) Section 36B of such Code, as so redesignated, is amended—

(i) by striking paragraph (4) of subsection (b), and

(ii) by striking subsection (c).

(J) Section 137 of such Code is amended—

(i) by striking ''section 23(d)'' in subsection (d) and inserting ''section 36B(d)'', and

(ii) by striking ''section 23'' in subsection (e) and inserting ''section 36B''.

(K) Section 904(i) of such Code is amended by striking ''23,''.

(L) Section 1016(a)(26) is amended by striking ''23(g)'' and inserting ''36B(g)''.

(M) Section 1400C(d) of such Code is amended by striking ''23,''.

(N) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code of 1986 is amended by striking the item relating to section 23.

(O) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting ''36B,'' after ''36A,''.

(P) The table of sections for subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 36A the following new item:

''Sec. 36B. Adoption expenses.''.

(c) EXTENSION OF CREDIT AND ADOPTION ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Section 36B of the Internal Revenue Code of 1986, as redesignated by subsection (b), is amended by adding at the end the following new subsection:

''(i) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2014.''.

(2) IN GENERAL.—Section 137 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(g) TERMINATION.—This section shall not apply to expenses paid or incurred in taxable years beginning after December 31, 2014.''.

(3) SUNSET FOR MODIFICATIONS MADE BY EGTRRA TO ADOPTION CREDIT REMOVED.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 shall not apply to the amendments made by section 202 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

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**SA 3185.** Mr. BROWN submitted an amendment intended to be proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 553, between lines 14 and 15, insert the following:

**SEC. 2721. INCREASED PAYMENTS FOR PEDIATRIC CARE UNDER MEDICAID.**

(a) IN GENERAL.—

(1) FEE-FOR-SERVICE PAYMENTS.—Section 1902 of the Social Security Act (42 U.S.C. 1396b), as amended by section 2001(b)(2), is amended—

(A) in subsection (a)(13)—

(i) by striking ''and'' at the end of subparagraph (A);

(ii) by adding ''and'' at the end of subparagraph (B); and

(iii) by adding at the end the following new subparagraph:

''(C) payment for pediatric care services (as defined in subsection (hh)(1)) furnished by physicians (as defined in section 1861(r)) (or for services furnished by other health care professionals that would be pediatric care services under such subsection if furnished by a physician) at a rate not less than 80 percent of the payment rate that would be applicable if the adjustment described in subsection (hh)(2) were to apply to such services under part B of title XVIII (or, if there is no payment rate for such services under part B of title XVIII, the payment rate for the most comparable services, as determined by the Secretary in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1900 and adjusted as appropriate for a pediatric population) for services furnished in 2010, 90 percent of such adjusted payment rate for such services furnished in 2011, and 100 percent of such adjusted payment rate for such services furnished in 2012 and each subsequent year;''; and

(B) by adding at the end the following new subsection:

''(hh) INCREASED PAYMENT FOR PEDIATRIC CARE.—For purposes of subsection (a)(13)(C):

''(1) PEDIATRIC CARE SERVICES DEFINED.—The term 'pediatric care services' means evaluation and management services, without regard to the specialty of the physician or hospital furnishing the services, that are procedure codes (for services covered under title XVIII) for services in the category designated Evaluation and Management in the Healthcare Common Procedure Coding System (established by the Secretary under section 1848(c)(5) as of December 31, 2009, and as subsequently modified by the Secretary) and that are furnished to an individual who is enrolled in the State plan under this title who has not attained age 19. Such term includes procedure codes established by the Secretary, in consultation with the Medicaid and CHIP Payment and Access Commission established under section 1900, for services furnished under State plans under this title to individuals who have not attained age 19 and for which there is not an a procedure code (or a procedure code that the Secretary, in consultation with such Commission, determines is comparable) established under the Healthcare Common Procedure Coding System.

''(2) ADJUSTMENT.—The adjustment described in this paragraph is the substitution of 1.25 percent for the update otherwise provided under section 1848(d)(4) for each year beginning with 2010.''.

(2) UNDER MEDICAID MANAGED CARE PLANS.—Section 1932(f) of such Act (42 U.S.C. 1396u–2(f)) is amended—

(A) in the heading, by adding at the end the following: ''; ADEQUACY OF PAYMENT FOR PEDIATRIC CARE SERVICES''; and

(B) by inserting before the period at the end the following: ''and, in the case of pediatric care services described in section 1902(a)(13)(C), consistent with the minimum payment rates specified in such section (regardless of the manner in which such payments are made, including in the form of capitation or partial capitation)''.

(b) INCREASED FMAP.—Section 1905 of such Act (42 U.S.C. 1396d), as amended by sections 2006 and 4107(a)(2), is amended

(1) in the first sentence of subsection (b), by striking ''and'' before ''(4)'' and by inserting before the period at the end the following: '', and (5) 100 percent (for periods beginning with 2010) with respect to amounts described in subsection (cc)''; and

(2) by adding at the end the following new subsection:

''(cc) For purposes of section 1905(b)(5), the amounts described in this subsection are the following:

''(1)(A) The portion of the amounts expended for medical assistance for services described in section 1902(a)(13)(C) furnished on or after January 1, 2010, that is attributable to the amount by which the minimum payment rate required under such section (or, by application, section 1932(f)) exceeds the payment rate applicable to such services under the State plan as of the date of enactment of the Patient Protection and Affordable Care Act.

''(B) Subparagraph (A) shall not be construed as preventing the payment of Federal financial participation based on the Federal medical assistance percentage for amounts in excess of those specified under such subparagraph.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2010.

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**SA 3186.** Mr. BROWN submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 729, strike line 21 and all that follows through line 13 on page 730, and insert the following:

''(xv) Promoting—

''(I) improved quality and reduced cost by developing a collaborative of high-quality, low-cost health care institutions that is responsible for—

''(aa) developing, documenting, and disseminating best practices and proven care methods;

''(bb) implementing such best practices and proven care methods within such institutions to demonstrate further improvements in quality and efficiency; and

''(cc) providing assistance to other health care institutions on how best to employ such best practices and proven care methods to improve health care quality and lower costs.

''(II) improved quality and reduced cost by developing a similarly focused collaborative of pediatric providers and institutions through the Medicaid and CHIP programs.''.

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**SA 3187.** Mr. WYDEN (for himself and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 828, between lines 3 and 4, insert the following:

**SEC. 3130. MEDICARE CRITICAL ACCESS HOSPITAL PROVISIONS.**

(a) FLEXIBILITY IN THE MANNER IN WHICH BEDS ARE COUNTED FOR PURPOSES OF DETERMINING WHETHER A HOSPITAL MAY BE DESIGNATED AS A CRITICAL ACCESS HOSPITAL UNDER THE MEDICARE PROGRAM.—

(1) IN GENERAL.—Section 1820(c)(2)(B) of the Social Security Act (42 U.S.C. 1395i–4(c)(2)(B)) is amended—

(A) in clause (iii), by inserting ''(or 20, as determined on an annual, average basis)'' after ''25''; and

(B) by adding at the end the following flush sentence:

''In determining the number of beds for purposes of clause (iii), only beds that are occupied shall be counted.''.

(2) EFFECTIVE DATE.—The amendments made by this subsection take effect on January 1, 2010.

(b) CRITICAL ACCESS HOSPITAL INPATIENT BED LIMITATION EXEMPTION FOR BEDS PROVIDED TO CERTAIN VETERANS.—

(1) IN GENERAL.—Section 1820(c) of the Social Security Act (42 U.S.C. 1395i–4(c)) is amended by adding at the end the following new paragraph:

''(3) EXEMPTION FROM BED LIMITATION.—For purposes of this section, no acute care inpatient bed shall be counted against any numerical limitation specified under this section for such a bed (or for inpatient bed days with respect to such a bed) if the bed is provided for an individual who is a veteran and the Department of Veterans Affairs referred the individual for care in the hospital or is coordinating such care with other care being provided by such Department.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after the date of the enactment of this Act

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**SA 3188.** Ms. CANTWELL submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 2074, after line 25, add the following:

**SEC. _____. TREATMENT OF HRAS.**

For purposes of the provisions of, and amendments made by, this Act, and the provisions of any other law, funds from a health reimbursement arrangement used in whole or in part by an individual to purchase an individual or family health benefits plan shall not be considered or construed as an employer contribution and such individual or family plan shall not be considered or construed as a group health benefits plan.

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**SA 3189.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1053, between lines 2 and 3, insert the following:

**SEC. 3404. AUTHORITY TO VARY THE AMOUNT OF THE MEDICARE PART B PREMIUM FOR NEW BENEFICIARIES THAT SMOKE AND BENEFICIARIES THAT MAKE HEALTHY CHOICES.**

Section 1839 of the Social Security Act (42 U.S.C. 1395r) is amended—

(1) in subsection (a)(2), by striking ''and (i)'' and inserting ''(i), and (j)''; and

(2) by adding at the end the following new subsection:

''(j) AUTHORITY TO VARY THE AMOUNT OF THE PREMIUM FOR BENEFICIARIES THAT SMOKE AND BENEFICIARIES THAT MAKE HEALTHY CHOICES.—With respect to the monthly premium amount for individuals who enroll under this part after the date of the enactment of the Patient Protection and Affordable Care Act, the Secretary shall vary the amount of such premium for such an individual if the individual smokes or makes healthy choices to improve health outcomes (as defined by the Secretary).''.

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**SA 3190.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 245, between lines 14 and 15, and insert the following:

(B) SPECIAL RULE FOR CERTAIN INDIVIDUALS ELIGIBLE FOR MEDICAID.—If a taxpayer is an individual described in section 1902(k)(3) of the Social Security Act who elects, in accordance with procedures established by a State under that section, to enroll in a qualified health plan and whose household income does not exceed 100 percent of an amount equal to the poverty line for a family of the size involved, the taxpayer shall—

(i) for purposes of the credit under this section, be treated as an applicable taxpayer and the applicable percentage with respect to such taxpayer shall be 2.0 percent; and

(ii) for purposes of reduced cost-sharing under section 1402 of the Patient Protection and Affordable Care Act, shall be treated as having household income of more than 100 percent but less than 150 percent of the poverty line (as so defined) applicable to a family of the size involved.

On page 404, between lines 13 and 14, insert the following:

''(3) The State shall establish procedures to ensure that any individual eligible for medical assistance under the State plan or under a waiver of the plan (under any subclause of subsection (a)(10)(A) or otherwise) who is not elderly or disabled may elect to enroll in a qualified health plan through an Exchange established by the State under section 1311 of the Patient Protection and Affordable Care Act instead of enrolling in the State plan under this title or a waiver of the plan. An individual making such an election shall waive being provided with medical assistance under the State plan or waiver while enrolled in the qualified health plan. In the case of an individual who is a child, the child's parent may make such an election on behalf of the child.

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**SA 3191.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1266, between lines 17 and 18, insert the following:

**SEC. 4403. TERMINATION OF PROGRAMS.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary of Health and Human Services shall terminate a program established under this title if the Secretary of Health and Human Services determines that such program has not reduced health care costs for the Federal government and beneficiaries under such program.

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**SA 3192.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 356, between lines 19 and 20, insert the following:

''(f) LIMITATION.—If in any calendar year the national unemployment rate (as determined by the Bureau of Labor Statistics) exceeds 6 percent, then, notwithstanding any other provision of law, this section shall not apply for the remainder of such calendar year.''.

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**SA 3193.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 1142, strike lines 8 through 16 and insert the following:

(c) USE OF FUND.—Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary shall allocate amounts in the Fund to the high risk pool program under section 1101 and the reinsurance program for individual and small group markets in each State under section 1341, in order to lower health care premiums for Americans.

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**SA 3194.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle E of title IV, insert the following:

**SEC. 4403. PROHIBITION ON THE USE OF FUNDS FOR THE CONSTRUCTION OF SIDEWALKS, PLAYGROUNDS, OR JUNGLE GYMS.**

Notwithstanding any other provision of this Act (or an amendment made by this Act), no funds appropriated under this Act (or an amendment made by this Act) shall be allocated to pay for the construction of sidewalks, playgrounds, or jungle gyms.

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**SA 3195.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 101, between lines 19 and 20, insert the following:

(3) INCLUSION OF HIGH DEDUCTIBLE HEALTH PLANS.—If a health plan is a high deductible health plan (as defined in section 223(c)(2) of the Internal Revenue Code of 1986) that meets all requirements under such section to be offered in connection with a health savings account—

(A) such plan shall be treated as a qualified health plan under this section, and as minimum essential coverage under section 5000A of such Code, for purposes of this Act and the amendments made by this Act;

(B) no requirement imposed by any provision of, or any amendment made by, this Act shall apply with respect to the plan or issuer thereof.

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**SA 3196.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

On page 54, between lines 19 and 20, insert the following:

(g) USE OF FUND.—Notwithstanding any other provision of this Act (or an amendment made by this Act), the Secretary shall allocate amounts appropriated under subsection (e) to the high risk pool program under section 1101 and the reinsurance program for individual and small group markets in each State under section 1341, in order to lower health care premiums for Americans.

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**SA 3197.** Mr. ENZI submitted an amendment intended to be proposed to amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike the matter proposed to be inserted and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Small Business Health Plans Act of 2009''.

## TITLE I—ENHANCED MARKETPLACE POOLS

### SEC. 101. RULES GOVERNING ENHANCED MARKETPLACE POOLS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

## "PART 8—RULES GOVERNING ENHANCED MARKETPLACE POOLS

### "SEC. 801. SMALL BUSINESS HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'small business health plan' means a fully insured group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership;

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation; and

''(4) does not condition membership on the basis of a minimum group size.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), (3), and (4) shall be deemed to be a sponsor described in this subsection.

### "SEC. 802. ALTERNATIVE MARKET POOLING ORGANIZATIONS.

''(a) IN GENERAL.—The Secretary, not later than 1 year after the date of enactment of this part, shall promulgate regulations that apply the rules and standards of this part, as necessary, to circumstances in which a pooling entity other (hereinafter 'Alternative Market Pooling Organizations') is not made up principally of employers and their employees, or not a professional organization or such small business health plan entity identified in section 801.

''(b) ADAPTION OF STANDARDS.—In developing and promulgating regulations pursuant to subsection (a), the Secretary, in consultation with the Secretary of Health and Human Services, small business health plans, small and large employers, large and small insurance issuers, consumer representatives, and state insurance commissioners, shall—

''(1) adapt the standards of this part, to the maximum degree practicable, to assure balanced and comparable oversight standards for both small business health plans and alternative market pooling organizations;

''(2) permit the participation as alternative market pooling organizations unions, churches and other faith-based organizations, or other organizations composed of individuals and groups which may have little or no association with employment, provided however, that such alternative market pooling organizations meet, and continue meeting on an ongoing basis, to satisfy standards, rules, and requirements materially equivalent to those set forth in this part with respect to small business health plans;

''(3) conduct periodic verification of such compliance by alternative market pooling organizations, in consultation with the Secretary of Health and Human Services and the National Association of Insurance Commissioners, except that such periodic verification shall not materially impede market entry or participation as pooling entities comparable to that of small business health plans;

''(4) assure that consistent, clear, and regularly monitored standards are applied with respect to alternative market pooling organizations to avert material risk-selection within or among the composition of such organizations;

''(5) the expedited and deemed certification procedures provided in section 805(d) shall not apply to alternative market pooling organizations until sooner of the promulgation of regulations under this subsection or the expiration of one year following enactment of this Act; and

''(6) make such other appropriate adjustments to the requirements of this part as the Secretary may reasonably deem appropriate to fit the circumstances of an individual alternative market pooling organization or category of such organization, including but not limited to the application of the membership payment requirements of section 801(b)(2) to alternative market pooling organizations composed primarily of church- or faith-based membership.

### "SEC. 803. CERTIFICATION OF SMALL BUSINESS HEALTH PLANS.

''(a) IN GENERAL.—Not later than 6 months after the date of enactment of this part, the applicable authority shall prescribe by interim final rule a procedure under which the applicable authority shall certify small business health plans which apply for certification as meeting the requirements of this part.

''(b) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—A small business health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(c) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of small business health plans under this part. Such regulation shall provide for the revocation of a certification if the applicable authority finds that the small business health plan involved is failing to comply with the requirements of this part.

''(d) EXPEDITED AND DEEMED CERTIFICATION.—

''(1) IN GENERAL.—If the Secretary fails to act on an application for certification under this section within 90 days of receipt of such application, the applying small business health plan shall be deemed certified until such time as the Secretary may deny for cause the application for certification.

''(2) CIVIL PENALTY.—The Secretary may assess a civil penalty against the board of trustees and plan sponsor (jointly and severally) of a small business health plan that is deemed certified under paragraph (1) of up to $500,000 in the event the Secretary determines that the application for certification of such small business health plan was willfully or with gross negligence incomplete or inaccurate.

### "SEC. 804. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to a small business health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to a small business health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a plan document, by a board of trustees which pursuant to a trust agreement has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to a small business health plan which is in existence on the date of the enactment of the Small Business Health Plans Act of 2009.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with insurers.

''(c) TREATMENT OF FRANCHISES.—In the case of a group health plan which is established and maintained by a franchiser for a franchisor or for its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchisor were deemed to be the sponsor referred to in section 801(b) and each franchisee were deemed to be a member (of the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

For purposes of this subsection the terms 'franchisor' and 'franchisee' shall have the

meanings given such terms for purposes of sections 436.2(a) through 436.2(c) of title 16, Code of Federal Regulations (including any such amendments to such regulation after the date of enactment of this part).

**"SEC. 805. PARTICIPATION AND COVERAGE REQUIREMENTS.**

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor;

''(B) the sponsor; or

''(C) an affiliated member of the sponsor, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the dependents of individuals described in subparagraph (A).

''(b) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to a small business health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(c) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to a small business health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) information regarding all coverage options available under the plan is made readily available to any employer eligible to participate; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

**"SEC. 806. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.**

''(a) IN GENERAL.—The requirements of this section are met with respect to a small business health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—

''(A) IN GENERAL.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(i) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A)); and

''(ii) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)).

''(B) DESCRIPTION OF MATERIAL PROVISIONS.—The terms of the health insurance coverage (including the terms of any individual certificates that may be offered to individuals in connection with such coverage) describe the material benefit and rating, and other provisions set forth in this section and such material provisions are included in the summary plan description.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged, subject to subparagraph (B) and the terms of this title.

''(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude a health insurance issuer offering health insurance coverage in connection with a small business health plan that meets the requirements of this part, and at the request of such small business health plan, from—

''(i) setting contribution rates for the small business health plan based on the claims experience of the small business health plan so long as any variation in such rates for participating small employers complies with the requirements of clause (ii), except that small business health plans shall not be subject, in non-adopting states, to subparagraphs (A)(ii) and (C) of section 2912(a)(2) of the Public Health Service Act, and in adopting states, to any State law that would have the effect of imposing requirements as outlined in such subparagraphs (A)(ii) and (C); or

''(ii) varying contribution rates for participating small employers in a small business health plan in a State to the extent that such rates could vary using the same methodology employed in such State for regulating small group premium rates, subject to the terms of part I of subtitle A of title XXIX of the Public Health Service Act (relating to rating requirements), as added by title II of the Small Business Health Plans Act of 2009.

''(3) EXCEPTIONS REGARDING SELF-EMPLOYED AND LARGE EMPLOYERS.—

''(A) SELF EMPLOYED.—

''(i) IN GENERAL.—Small business health plans with participating employers who are self-employed individuals (and their dependents) shall enroll such self-employed participating employers in accordance with rating rules that do not violate the rating rules for self-employed individuals in the State in which such self-employed participating employers are located.

''(ii) GUARANTEE ISSUE.—Small business health plans with participating employers who are self-employed individuals (and their dependents) may decline to guarantee issue to such participating employers in States in which guarantee issue is not otherwise required for the self-employed in that State.

''(B) LARGE EMPLOYERS.—Small business health plans with participating employers that are larger than small employers (as defined in section 808(a)(10)) shall enroll such large participating employers in accordance with rating rules that do not violate the rating rules for large employers in the State in which such large participating employers are located.

''(4) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF SMALL BUSINESS HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude a small business health plan or a health insurance issuer offering health insurance coverage in connection with a small business health plan from exercising its sole discretion in selecting the specific benefits and services consisting of medical care to be included as benefits under such plan or coverage, except that such benefits and services must meet the terms and specifications of part II of subtitle A of title XXIX of the Public Health Service Act (relating to lower cost plans), as added by title II of the Small Business Health Plans Act of 2009.

''(c) DOMICILE AND NON-DOMICILE STATES.—

''(1) DOMICILE STATE.—Coverage shall be issued to a small business health plan in the State in which the sponsor's principal place of business is located.

''(2) NON-DOMICILE STATES.—With respect to a State (other than the domicile State) in which participating employers of a small business health plan are located but in which the insurer of the small business health plan in the domicile State is not yet licensed, the following shall apply:

''(A) TEMPORARY PREEMPTION.—If, upon the expiration of the 90-day period following the submission of a licensure application by such insurer (that includes a certified copy of an approved licensure application as submitted by such insurer in the domicile State) to such State, such State has not approved or denied such application, such State's health insurance licensure laws shall be temporarily preempted and the insurer shall be permitted to operate in such State, subject to the following terms:

''(i) APPLICATION OF NON-DOMICILE STATE LAW.—Except with respect to licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits as added by the Small Business Health Plans Act of 2009), the laws and authority of the non-domicile State shall remain in full force and effect.

''(ii) REVOCATION OF PREEMPTION.—The preemption of a non-domicile State's health insurance licensure laws pursuant to this subparagraph, shall be terminated upon the occurrence of either of the following:

''(I) APPROVAL OR DENIAL OF APPLICATION.—The approval of denial of an insurer's licensure application, following the laws and regulations of the non-domicile State with respect to licensure.

''(II) DETERMINATION OF MATERIAL VIOLATION.—A determination by a non-domicile State that an insurer operating in a non-domicile State pursuant to the preemption provided for in this subparagraph is in material violation of the insurance laws (other than licensure and with respect to the terms of subtitle A of title XXIX of the Public Health Service Act (relating to rating and benefits added by the Small Business Health Plans Act of 2009)) of such State.

''(B) NO PROHIBITION ON PROMOTION.—Nothing in this paragraph shall be construed to prohibit a small business health plan or an insurer from promoting coverage prior to the expiration of the 90-day period provided for in subparagraph (A), except that no enrollment or collection of contributions shall occur before the expiration of such 90-day period.

''(C) LICENSURE.—Except with respect to the application of the temporary preemption provision of this paragraph, nothing in this part shall be construed to limit the requirement that insurers issuing coverage to small business health plans shall be licensed in

each State in which the small business health plans operate.

''(D) SERVICING BY LICENSED INSURERS.—Notwithstanding subparagraph (C), the requirements of this subsection may also be satisfied if the participating employers of a small business health plan are serviced by a licensed insurer in that State, even where such insurer is not the insurer of such small business health plan in the State in which such small business health plan is domiciled.

**''SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.**

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), a small business health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to small business health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan, health insurance issuer, and contract administrators and other service providers.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to a small business health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which the small business health plans operate.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any small business health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

**''SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.**

''A small business health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

**''SEC. 809. IMPLEMENTATION AND APPLICATION AUTHORITY BY SECRETARY.**

''The Secretary shall, through promulgation and implementation of such regulations as the Secretary may reasonably determine necessary or appropriate, and in consultation with a balanced spectrum of effected entities and persons, modify the implementation and application of this part to accommodate with minimum disruption such changes to State or Federal law provided in this part and the (and the amendments made by such Act) or in regulations issued thereto.

**''SEC. 810. DEFINITIONS AND RULES OF CONSTRUCTION.**

''(a) DEFINITIONS.—For purposes of this part—

''(1) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor, or

''(B) in the case of a sponsor with members which consist of associations, a person who is a member or employee of any such association and elects an affiliated status with the sponsor.

''(2) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary of Labor, except that, in connection with any exercise of the Secretary's authority with respect to which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(3) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(4) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(5) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1), except that such term shall not include excepted benefits (as defined in section 733(c)).

''(6) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(9) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with a small business health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(10) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, a small employer as defined in section 2791(e)(4).

''(11) TRADE ASSOCIATION AND PROFESSIONAL ASSOCIATION.—The terms 'trade association' and 'professional association' mean an entity that meets the requirements of section 1.501(c)(6)–1 of title 26, Code of Federal Regulations (as in effect on the date of enactment of this Act).

''(b) RULE OF CONSTRUCTION.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is a small business health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(1) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(2) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(c) RENEWAL.—Notwithstanding any provision of law to the contrary, a participating employer in a small business health plan shall not be deemed to be a plan sponsor in applying requirements relating to coverage renewal.

''(d) HEALTH SAVINGS ACCOUNTS.—Nothing in this part shall be construed to create any mandates for coverage of benefits for HSA-qualified health plans that would require reimbursements in violation of section 223(c)(2) of the Internal Revenue Code of 1986.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of a small business health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude a health insurance issuer from offering health insurance coverage in connection with a small business health plan which is certified under part 8.

''(2) In any case in which health insurance coverage of any policy type is offered under a small business health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may establish rating and benefit requirements that would otherwise apply to such coverage, provided the requirements of subtitle A of title XXIX of the Public Health Service Act (as added by title II of the Health Insurance Marketplace Modernization and Affordability Act of 2007) (concerning health plan rating and benefits) are met.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of a small business health plan under part 8.''.

(d) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(e) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING SMALL BUSINESS HEALTH PLANS

''801. Small business health plans.
''802. Alternative market pooling organizations.
''803. Certification of small business health plans.
''804. Requirements relating to sponsors and boards of trustees.
''805. Participation and coverage requirements.
''806. Other requirements relating to plan documents, contribution rates, and benefit options.
''807. Requirements for application and related requirements.
''808. Notice requirements for voluntary termination.
''809. Implementation and application authority by Secretary.
''810. Definitions and rules of construction.''.

**SEC. 102. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.**

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO SMALL BUSINESS HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to a small business health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify small business health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular small business health plan, as the State with which consultation is required. In carrying out this paragraph such State shall be the domicile State, as defined in section 805(c).''.

**SEC. 103. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.**

(a) EFFECTIVE DATE.—The amendments made by this title shall take effect 12 months after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this title within 6 months after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 808(a)(2) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of trustees which has control over the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement or at such time that the arrangement provides coverage to participants and beneficiaries in any State other than the States in which coverage is provided on such date of enactment.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 808 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''small business health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

## TITLE II—MARKET RELIEF

**SEC. 301. MARKET RELIEF.**

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

## ''TITLE XXIX—HEALTH CARE INSURANCE MARKETPLACE MODERNIZATION

**''SEC. 2901. GENERAL INSURANCE DEFINITIONS.**

''In this title, the terms 'health insurance coverage', 'health insurance issuer', 'group health plan', and 'individual health insurance' shall have the meanings given such terms in section 2791.

**''SEC. 2902. IMPLEMENTATION AND APPLICATION AUTHORITY BY SECRETARY.**

''The Secretary shall, through promulgation and implementation of such regulations as the Secretary may reasonably determine necessary or appropriate, and in consultation with a balanced spectrum of effected entities and persons, modify the implementation and application of this title to accommodate with minimum disruption such changes to State or Federal law provided in this title and the (and the amendments made by such Act) or in regulations issued thereto.

### ''Subtitle A—Market Relief

### ''PART I—RATING REQUIREMENTS

**''SEC. 2911. DEFINITIONS.**

''In this part:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that, with respect to the small group market, has enacted small group rating rules that meet the minimum standards set forth in section 2912(a)(1) or, as applicable, transitional small group rating rules set forth in section 2912(b).

''(2) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the insurance laws of such State.

''(3) BASE PREMIUM RATE.—The term 'base premium rate' means, for each class of business with respect to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

''(4) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the Model Small Group Rating Rules or, as applicable, transitional small group rating rules in a State;

''(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer small group health insurance coverage in that State consistent with the Model Small Group Rating Rules, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency); and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer's contract of the Model Small Group Rating Rules and an affirmation that such Rules are included in the terms of such contract.

''(5) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the small group health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c)).

''(6) INDEX RATE.—The term 'index rate' means for each class of business with respect to the rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

''(7) MODEL SMALL GROUP RATING RULES.—The term 'Model Small Group Rating Rules' means the rules set forth in section 2912(a)(2).

''(8) NONADOPTING STATE.—The term 'non-adopting State' means a State that is not an adopting State.

''(9) SMALL GROUP INSURANCE MARKET.—The term 'small group insurance market' shall have the meaning given the term 'small group market' in section 2791(e)(5).

''(10) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

''(11) VARIATION LIMITS.—

''(A) COMPOSITE VARIATION LIMIT.—

''(i) IN GENERAL.—The term 'composite variation limit' means the total variation in premium rates charged by a health insurance issuer in the small group market as permitted under applicable State law based on the following factors or case characteristics:

''(I) Age.

''(II) Duration of coverage.

''(III) Claims experience.

''(IV) Health status.

''(ii) USE OF FACTORS.—With respect to the use of the factors described in clause (i) in setting premium rates, a health insurance issuer shall use one or both of the factors described in subclauses (I) or (IV) of such clause and may use the factors described in subclauses (II) or (III) of such clause.

''(B) TOTAL VARIATION LIMIT.—The term 'total variation limit' means the total variation in premium rates charged by a health insurance issuer in the small group market as permitted under applicable State law based on all factors and case characteristics (as described in section 2912(a)(1)).

**''SEC. 2912. RATING RULES.**

''(a) ESTABLISHMENT OF MINIMUM STANDARDS FOR PREMIUM VARIATIONS AND MODEL SMALL GROUP RATING RULES.—Not later than 6 months after the date of enactment of this title, the Secretary shall promulgate regulations establishing the following Minimum Standards and Model Small Group Rating Rules:

''(1) MINIMUM STANDARDS FOR PREMIUM VARIATIONS.—

''(A) COMPOSITE VARIATION LIMIT.—The composite variation limit shall not be less than 3:1.

''(B) TOTAL VARIATION LIMIT.—The total variation limit shall not be less than 5:1.

''(C) PROHIBITION ON USE OF CERTAIN CASE CHARACTERISTICS.—For purposes of this paragraph, in calculating the total variation limit, the State shall not use case characteristics other than those used in calculating the composite variation limit and industry, geographic area, group size, participation rate, class of business, and participation in wellness programs.

''(2) MODEL SMALL GROUP RATING RULES.—The following apply to an eligible insurer in a non-adopting State:

''(A) PREMIUM RATES.—Premium rates for small group health benefit plans to which this title applies shall comply with the following provisions relating to premiums, except as provided for under subsection (b):

''(i) VARIATION IN PREMIUM RATES.—The plan may not vary premium rates by more than the minimum standards provided for under paragraph (1).

''(ii) INDEX RATE.—The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than 20 percent, excluding those classes of business related to association groups under this title.

''(iii) CLASS OF BUSINESSES.—With respect to a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than 25 percent of the index rate under clause (ii).

''(iv) INCREASES FOR NEW RATING PERIODS.—The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

''(I) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, except that such change shall not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.

''(II) Any adjustment, not to exceed 15 percent annually and adjusted pro rata for rating periods of less then 1 year, due to the claim experience, health status or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business involved.

''(III) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

''(v) UNIFORM APPLICATION OF ADJUSTMENTS.—Adjustments in premium rates for claim experience, health status, or duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

''(vi) PROHIBITION ON USE OF CERTAIN CASE CHARACTERISTIC.—A small employer carrier shall not utilize case characteristics, other than those permitted under paragraph (1)(C), without the prior approval of the applicable State authority.

''(vii) CONSISTENT APPLICATION OF FACTORS.—Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors shall produce premiums for identical groups which differ only by the amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.

''(viii) TREATMENT OF PLANS AS HAVING SAME RATING PERIOD.—A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

''(ix) REQUIRE COMPLIANCE.—Premium rates for small business health benefit plans shall comply with the requirements of this subsection notwithstanding any assessments paid or payable by a small employer carrier as required by a State's small employer carrier reinsurance program.

''(B) ESTABLISHMENT OF SEPARATE CLASS OF BUSINESS.—Subject to subparagraph (C), a small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs related to the following:

''(i) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

''(ii) The small employer carrier has acquired a class of business from another small employer carrier.

''(iii) The small employer carrier provides coverage to one or more association groups that meet the requirements of this title.

''(C) LIMITATION.—A small employer carrier may establish up to 9 separate classes of business under subparagraph (B), excluding those classes of business related to association groups under this title.

''(D) LIMITATION ON TRANSFERS.—A small employer carrier shall not transfer a small employer involuntarily into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless such offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status or duration of coverage since issue.

''(b) TRANSITIONAL MODEL SMALL GROUP RATING RULES.—

''(1) IN GENERAL.—Not later than 6 months after the date of enactment of this title and to the extent necessary to provide for a graduated transition to the minimum standards for premium variation as provided for in subsection (a)(1), the Secretary, in consultation with the National Association of Insurance Commissioners (NAIC), shall promulgate State-specific transitional small group rating rules in accordance with this subsection, which shall be applicable with respect to non-adopting States and eligible insurers operating in such States for a period of not to exceed 3 years from the date of the promulgation of the minimum standards for premium variation pursuant to subsection (a).

''(2) COMPLIANCE WITH TRANSITIONAL MODEL SMALL GROUP RATING RULES.—During the transition period described in paragraph (1), a State that, on the date of enactment of this title, has in effect a small group rating rules methodology that allows for a variation that is less than the variation provided for under subsection (a)(1) (concerning minimum standards for premium variation), shall be deemed to be an adopting State if the State complies with the transitional small group rating rules as promulgated by the Secretary pursuant to paragraph (1).

''(3) TRANSITIONING OF OLD BUSINESS.—

''(A) IN GENERAL.—In developing the transitional small group rating rules under paragraph (1), the Secretary shall, after consultation with the National Association of Insurance Commissioners and representatives of insurers operating in the small group health insurance market in non-adopting States, promulgate special transition standards with respect to independent rating classes for old and new business, to the extent reasonably necessary to protect health insurance consumers and to ensure a stable and fair transition for old and new market entrants.

''(B) PERIOD FOR OPERATION OF INDEPENDENT RATING CLASSES.—In developing the special transition standards pursuant to subparagraph (A), the Secretary shall permit a carrier in a non-adopting State, at its option, to maintain independent rating classes for old and new business for a period of up to 5 years, with the commencement of such 5-year period to begin at such time, but not later than the date that is 3 years after the date of enactment of this title, as the carrier offers a book of business meeting the minimum standards for premium variation provided for in subsection (a)(1) or the transitional small group rating rules under paragraph (1).

''(4) OTHER TRANSITIONAL AUTHORITY.—In developing the transitional small group rating rules under paragraph (1), the Secretary shall provide for the application of the transitional small group rating rules in transition States as the Secretary may determine necessary for a an effective transition.

''(c) MARKET RE-ENTRY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, a health insurance issuer that has voluntarily withdrawn from providing coverage in the small group market prior to the date of enactment of the Small Business Health Plans Act of 2009 shall not be excluded from re-entering such market on a date that is more than 180 days after such date of enactment.

''(2) TERMINATION.—The provision of this subsection shall terminate on the date that is 24 months after the date of enactment of the Small Business Health Plans Act of 2009.

**''SEC. 2913. APPLICATION AND PREEMPTION.**

''(a) SUPERSEDING OF STATE LAW.—

''(1) IN GENERAL.—This part shall supersede any and all State laws of a non-adopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle) relate to rating in the small group insurance market as applied to an eligible insurer, or small group health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small employer through a small business health plan, in a State.

''(2) NONADOPTING STATES.—This part shall supersede any and all State laws of a nonadopting State insofar as such State laws (whether enacted prior to or after the date of enactment of this subtitle)—

''(A) prohibit an eligible insurer from offering, marketing, or implementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules; or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing small group health insurance coverage consistent with the Model Small Group Rating Rules or transitional model small group rating rules.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting states.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers that offer small group health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supercede any State law in a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Model Small Group Rating Rules or transitional model small group rating rules.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

''(5) PREEMPTION LIMITED TO RATING.—Subsection (a) shall not preempt any State law that does not have a reference to or a connection with State rating rules that would otherwise apply to eligible insurers.

''(c) EFFECTIVE DATE.—This section shall apply, at the election of the eligible insurer, beginning in the first plan year or the first calendar year following the issuance of the final rules by the Secretary under the Model Small Group Rating Rules or, as applicable, the Transitional Model Small Group Rating Rules, but in no event earlier than the date that is 12 months after the date of enactment of this title.

**''SEC. 2914. CIVIL ACTIONS AND JURISDICTION.**

''(a) IN GENERAL.—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2913.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

**''SEC. 2915. ONGOING REVIEW.**

''Not later than 5 years after the date on which the Model Small Group Rating Rules are issued under this part, and every 5 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the Model Small Group Rating Rules on access, cost, and market functioning in the small group market. Such report may, if the Secretary, in consultation with the National Association of Insurance Commissioners, determines such is appropriate for improving access, costs, and market functioning, contain legislative proposals for recommended modification to such Model Small Group Rating Rules.

## ''PART II—AFFORDABLE PLANS

**''SEC. 2921. DEFINITIONS.**

''In this part:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that has enacted a law providing that small group, individual, and large group health insurers in such State may offer and sell products in accordance with the List of Required Benefits and the Terms of Application as provided for in section 2922(b).

''(2) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a nonadopting State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the List of Required Benefits and Terms of Application in a nonadopting State;

''(B) notifies the insurance department of a nonadopting State (or other applicable State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with the List of Required Benefits and Terms of Application, and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such group health coverage) and filed with the State pursuant to subparagraph (B), a description in the insurer's contract of the List of Required Benefits and a description of the Terms of Application, including a description of the benefits to be provided, and that adherence to such standards is included as a term of such contract.

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the small group, individual, or large group health insurance markets, including with respect to small business health plans, except that such term shall not include excepted benefits (as defined in section 2791(c)).

''(4) LIST OF REQUIRED BENEFITS.—The term 'List of Required Benefits' means the List issued under section 2922(a).

''(5) NONADOPTING STATE.—The term 'nonadopting State' means a State that is not an adopting State.

''(6) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

''(7) STATE PROVIDER FREEDOM OF CHOICE LAW.—The term 'State Provider Freedom of Choice Law' means a State law requiring that a health insurance issuer, with respect to health insurance coverage, not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law.

''(8) TERMS OF APPLICATION.—The term 'Terms of Application' means terms provided under section 2922(a).

**''SEC. 2922. OFFERING AFFORDABLE PLANS.**

''(a) LIST OF REQUIRED BENEFITS.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the National Association of Insurance Commissioners, shall issue by interim final rule a list (to be known as the 'List of Required Benefits') of covered benefits, services, or categories of providers that are required to be provided by health insurance issuers, in each of the small group, individual, and large group markets, in at least 26 States as a result of the application of State covered benefit, service, and category of provider mandate laws. With respect to plans sold to or through small business health plans, the List of Required Benefits applicable to the small group market shall apply.

''(b) TERMS OF APPLICATION.—

''(1) STATE WITH MANDATES.—With respect to a State that has a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required

Benefits under subsection (a), such State mandate shall, subject to paragraph (3) (concerning uniform application), apply to a coverage plan or plan in, as applicable, the small group, individual, or large group market or through a small business health plan in such State.

''(2) STATES WITHOUT MANDATES.—With respect to a State that does not have a covered benefit, service, or category of provider mandate in effect that is covered under the List of Required Benefits under subsection (a), such mandate shall not apply, as applicable, to a coverage plan or plan in the small group, individual, or large group market or through a small business health plan in such State.

''(3) UNIFORM APPLICATION OF LAWS.—

''(A) IN GENERAL.—With respect to a State described in paragraph (1), in applying a covered benefit, service, or category of provider mandate that is on the List of Required Benefits under subsection (a) the State shall permit a coverage plan or plan offered in the small group, individual, or large group market or through a small business health plan in such State to apply such benefit, service, or category of provider coverage in a manner consistent with the manner in which such coverage is applied under one of the three most heavily subscribed national health plans offered under the Federal Employee Health Benefits Program under chapter 89 of title 5, United States Code (as determined by the Secretary in consultation with the Director of the Office of Personnel Management), and consistent with the Publication of Benefit Applications under subsection (c). In the event a covered benefit, service, or category of provider appearing in the List of Required Benefits is not offered in one of the three most heavily subscribed national health plans offered under the Federal Employees Health Benefits Program, such covered benefit, service, or category of provider requirement shall be applied in a manner consistent with the manner in which such coverage is offered in the remaining most heavily subscribed plan of the remaining Federal Employees Health Benefits Program plans, as determined by the Secretary, in consultation with the Director of the Office of Personnel Management.

''(B) EXCEPTION REGARDING STATE PROVIDER FREEDOM OF CHOICE LAWS.—Notwithstanding subparagraph (A), in the event a category of provider mandate is included in the List of Covered Benefits, any State Provider Freedom of Choice Law (as defined in section 2921(7)) that is in effect in any State in which such category of provider mandate is in effect shall not be preempted, with respect to that category of provider, by this part.

''(c) PUBLICATION OF BENEFIT APPLICATIONS.—Not later than 3 months after the date of enactment of this title, and on the first day of every calendar year thereafter, the Secretary, in consultation with the Director of the Office of Personnel Management, shall publish in the Federal Register a description of such covered benefits, services, and categories of providers covered in that calendar year by each of the three most heavily subscribed nationally available Federal Employee Health Benefits Plan options which are also included on the List of Required Benefits.

''(d) EFFECTIVE DATES.—

''(1) SMALL BUSINESS HEALTH PLANS.—With respect to health insurance provided to participating employers of small business health plans, the requirements of this part (concerning lower cost plans) shall apply beginning on the date that is 12 months after the date of enactment of this title.

''(2) NON-ASSOCIATION COVERAGE.—With respect to health insurance provided to groups or individuals other than participating employers of small business health plans, the requirements of this part shall apply beginning on the date that is 15 months after the date of enactment of this title.

''(e) UPDATING OF LIST OF REQUIRED BENEFITS.—Not later than 2 years after the date on which the list of required benefits is issued under subsection (a), and every 2 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners, shall update the list based on changes in the laws and regulations of the States. The Secretary shall issue the updated list by regulation, and such updated list shall be effective upon the first plan year following the issuance of such regulation.

**''SEC. 2923. APPLICATION AND PREEMPTION.**

''(a) SUPERSEDING OF STATE LAW.—

''(1) IN GENERAL.—This part shall supersede any and all State laws insofar as such laws relate to mandates relating to covered benefits, services, or categories of provider in the health insurance market as applied to an eligible insurer, or health insurance coverage issued by an eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

''(2) NONADOPTING STATES.—This part shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as such laws—

''(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards, as provided for in section 2922(a); or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the Benefit Choice Standards.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supersede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the Benefit Choice Standards.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this part be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this part be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

''(5) PREEMPTION LIMITED TO BENEFITS.—Subsection (a) shall not preempt any State law that does not have a reference to or a connection with State mandates regarding covered benefits, services, or categories of providers that would otherwise apply to eligible insurers.

**''SEC. 2924. CIVIL ACTIONS AND JURISDICTION.**

''(a) IN GENERAL.—The courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this part.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2923.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

**''SEC. 2925. RULES OF CONSTRUCTION.**

''(a) IN GENERAL.—Notwithstanding any other provision of Federal or State law, a health insurance issuer in an adopting State or an eligible insurer in a non-adopting State may amend its existing policies to be consistent with the terms of this subtitle (concerning rating and benefits).

''(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to create any mandates for coverage of benefits for HSA-qualified health plans that would require reimbursements in violation of section 223(c)(2) of the Internal Revenue Code of 1986.''.

## TITLE III—HARMONIZATION OF HEALTH INSURANCE STANDARDS

**SEC. 301. HEALTH INSURANCE STANDARDS HARMONIZATION.**

Title XXIX of the Public Health Service Act (as added by section 201) is amended by adding at the end the following:

### ''Subtitle B—Standards Harmonization

**''SEC. 2931. DEFINITIONS.**

''In this subtitle:

''(1) ADOPTING STATE.—The term 'adopting State' means a State that has enacted the harmonized standards adopted under this subtitle in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

''(2) ELIGIBLE INSURER.—The term 'eligible insurer' means a health insurance issuer that is licensed in a nonadopting State and that—

''(A) notifies the Secretary, not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage consistent with the harmonized standards in a nonadopting State;

''(B) notifies the insurance department of a nonadopting State (or other State agency), not later than 30 days prior to the offering of coverage described in this subparagraph, that the issuer intends to offer health insurance coverage in that State consistent with

the harmonized standards published pursuant to section 2933(d), and provides with such notice a copy of any insurance policy that it intends to offer in the State, its most recent annual and quarterly financial reports, and any other information required to be filed with the insurance department of the State (or other State agency) by the Secretary in regulations; and

''(C) includes in the terms of the health insurance coverage offered in nonadopting States (including in the terms of any individual certificates that may be offered to individuals in connection with such health coverage) and filed with the State pursuant to subparagraph (B), a description of the harmonized standards published pursuant to section 2933(g)(2) and an affirmation that such standards are a term of the contract.

''(3) HARMONIZED STANDARDS.—The term 'harmonized standards' means the standards certified by the Secretary under section 2933(d).

''(4) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' means any coverage issued in the health insurance market, except that such term shall not include excepted benefits (as defined in section 2791(c).

''(5) NONADOPTING STATE.—The term 'nonadopting State' means a State that fails to enact, within 18 months of the date on which the Secretary certifies the harmonized standards under this subtitle, the harmonized standards in their entirety and as the exclusive laws of the State that relate to the harmonized standards.

''(6) STATE LAW.—The term 'State law' means all laws, decisions, rules, regulations, or other State actions (including actions by a State agency) having the effect of law, of any State.

**''SEC. 2932. HARMONIZED STANDARDS.**

''(a) BOARD.—

''(1) ESTABLISHMENT.—Not later than 3 months after the date of enactment of this title, the Secretary, in consultation with the NAIC, shall establish the Health Insurance Consensus Standards Board (referred to in this subtitle as the 'Board') to develop recommendations that harmonize inconsistent State health insurance laws in accordance with the procedures described in subsection (b).

''(2) COMPOSITION.—

''(A) IN GENERAL.—The Board shall be composed of the following voting members to be appointed by the Secretary after considering the recommendations of professional organizations representing the entities and constituencies described in this paragraph:

''(i) Four State insurance commissioners as recommended by the National Association of Insurance Commissioners, of which 2 shall be Democrats and 2 shall be Republicans, and of which one shall be designated as the chairperson and one shall be designated as the vice chairperson.

''(ii) Four representatives of State government, two of which shall be governors of States and two of which shall be State legislators, and two of which shall be Democrats and two of which shall be Republicans.

''(iii) Four representatives of health insurers, of which one shall represent insurers that offer coverage in the small group market, one shall represent insurers that offer coverage in the large group market, one shall represent insurers that offer coverage in the individual market, and one shall represent carriers operating in a regional market.

''(iv) Two representatives of insurance agents and brokers.

''(v) Two independent representatives of the American Academy of Actuaries who have familiarity with the actuarial methods applicable to health insurance.

''(B) EX OFFICIO MEMBER.—A representative of the Secretary shall serve as an ex officio member of the Board.

''(3) ADVISORY PANEL.—The Secretary shall establish an advisory panel to provide advice to the Board, and shall appoint its members after considering the recommendations of professional organizations representing the entities and constituencies identified in this paragraph:

''(A) Two representatives of small business health plans.

''(B) Two representatives of employers, of which one shall represent small employers and one shall represent large employers.

''(C) Two representatives of consumer organizations.

''(D) Two representatives of health care providers.

''(4) QUALIFICATIONS.—The membership of the Board shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health plans, providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.

''(5) ETHICAL DISCLOSURE.—The Secretary shall establish a system for public disclosure by members of the Board of financial and other potential conflicts of interest relating to such members. Members of the Board shall be treated as employees of Congress for purposes of applying title I of the Ethics in Government Act of 1978 (Public Law 95–521).

''(6) DIRECTOR AND STAFF.—Subject to such review as the Secretary deems necessary to assure the efficient administration of the Board, the chair and vice-chair of the Board may—

''(A) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

''(B) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

''(C) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Board (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

''(D) make advance, progress, and other payments which relate to the work of the Board;

''(E) provide transportation and subsistence for persons serving without compensation; and

''(F) prescribe such rules as it deems necessary with respect to the internal organization and operation of the Board.

''(7) TERMS.—The members of the Board shall serve for the duration of the Board. Vacancies in the Board shall be filled as needed in a manner consistent with the composition described in paragraph (2).

''(b) DEVELOPMENT OF HARMONIZED STANDARDS.—

''(1) IN GENERAL.—In accordance with the process described in subsection (c), the Board shall identify and recommend nationally harmonized standards for each of the following process categories:

''(A) FORM FILING AND RATE FILING.—Form and rate filing standards shall be established which promote speed to market and include the following defined areas for States that require such filings:

''(i) Procedures for form and rate filing pursuant to a streamlined administrative filing process.

''(ii) Timeframes for filings to be reviewed by a State if review is required before they are deemed approved.

''(iii) Timeframes for an eligible insurer to respond to State requests following its review.

''(iv) A process for an eligible insurer to self-certify.

''(v) State development of form and rate filing templates that include only non-preempted State law and Federal law requirements for eligible insurers with timely updates.

''(vi) Procedures for the resubmission of forms and rates.

''(vii) Disapproval rationale of a form or rate filing based on material omissions or violations of non-preempted State law or Federal law with violations cited and explained.

''(viii) For States that may require a hearing, a rationale for hearings based on violations of non-preempted State law or insurer requests.

''(B) MARKET CONDUCT REVIEW.—Market conduct review standards shall be developed which provide for the following:

''(i) Mandatory participation in national databases.

''(ii) The confidentiality of examination materials.

''(iii) The identification of the State agency with primary responsibility for examinations.

''(iv) Consultation and verification of complaint data with the eligible insurer prior to State actions.

''(v) Consistency of reporting requirements with the recordkeeping and administrative practices of the eligible insurer.

''(vi) Examinations that seek to correct material errors and harmful business practices rather than infrequent errors.

''(vii) Transparency and publishing of the State's examination standards.

''(viii) Coordination of market conduct analysis.

''(ix) Coordination and nonduplication between State examinations of the same eligible insurer.

''(x) Rationale and protocols to be met before a full examination is conducted.

''(xi) Requirements on examiners prior to beginning examinations such as budget planning and work plans.

''(xii) Consideration of methods to limit examiners' fees such as caps, competitive bidding, or other alternatives.

''(xiii) Reasonable fines and penalties for material errors and harmful business practices.

''(C) PROMPT PAYMENT OF CLAIMS.—The Board shall establish prompt payment standards for eligible insurers based on standards similar to those applicable to the Social Security Act as set forth in section 1842(c)(2) of such Act (42 U.S.C. 1395u(c)(2)). Such prompt payment standards shall be consistent with the timing and notice requirements of the claims procedure rules to be specified under subparagraph (D), and shall include appropriate exceptions such as for fraud, nonpayment of premiums, or late submission of claims.

''(D) INTERNAL REVIEW.—The Board shall establish standards for claims procedures for eligible insurers that are consistent with the requirements relating to initial claims for benefits and appeals of claims for benefits under the Employee Retirement Income Security Act of 1974 as set forth in section 503 of such Act (29 U.S.C. 1133) and the regulations thereunder.

''(2) RECOMMENDATIONS.—The Board shall recommend harmonized standards for each element of the categories described in subparagraph (A) through (D) of paragraph (1) within each such market. Notwithstanding

the previous sentence, the Board shall not recommend any harmonized standards that disrupt, expand, or duplicate the benefit, service, or provider mandate standards provided in the Benefit Choice Standards pursuant to section 2922(a).

''(c) PROCESS FOR IDENTIFYING HARMONIZED STANDARDS.—

''(1) IN GENERAL.—The Board shall develop recommendations to harmonize inconsistent State insurance laws with respect to each of the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(2) REQUIREMENTS.—In adopting standards under this section, the Board shall consider the following:

''(A) Any model acts or regulations of the National Association of Insurance Commissioners in each of the process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(B) Substantially similar standards followed by a plurality of States, as reflected in existing State laws, relating to the specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(C) Any Federal law requirement related to specific process categories described in subparagraphs (A) through (D) of subsection (b)(1).

''(D) In the case of the adoption of any standard that differs substantially from those referred to in subparagraphs (A), (B), or (C), the Board shall provide evidence to the Secretary that such standard is necessary to protect health insurance consumers or promote speed to market or administrative efficiency.

''(E) The criteria specified in clauses (i) through (iii) of subsection (d)(2)(B).

''(d) RECOMMENDATIONS AND CERTIFICATION BY SECRETARY.—

''(1) RECOMMENDATIONS.—Not later than 18 months after the date on which all members of the Board are selected under subsection (a), the Board shall recommend to the Secretary the certification of the harmonized standards identified pursuant to subsection (c).

''(2) CERTIFICATION.—

''(A) IN GENERAL.—Not later than 120 days after receipt of the Board's recommendations under paragraph (1), the Secretary shall certify the recommended harmonized standards as provided for in subparagraph (B), and issue such standards in the form of an interim final regulation.

''(B) CERTIFICATION PROCESS.—The Secretary shall establish a process for certifying the recommended harmonized standard, by category, as recommended by the Board under this section. Such process shall—

''(i) ensure that the certified standards for a particular process area achieve regulatory harmonization with respect to health plans on a national basis;

''(ii) ensure that the approved standards are the minimum necessary, with regard to substance and quantity of requirements, to protect health insurance consumers and maintain a competitive regulatory environment; and

''(iii) ensure that the approved standards will not limit the range of group health plan designs and insurance products, such as catastrophic coverage only plans, health savings accounts, and health maintenance organizations, that might otherwise be available to consumers.

''(3) APPLICATION AND EFFECTIVE DATE.—The standards certified by the Secretary under paragraph (2) shall apply and become effective on the date that is 18 months after the date on which the Secretary certifies the harmonized standards.

''(e) TERMINATION.—The Board shall terminate and be dissolved after making the recommendations to the Secretary pursuant to subsection (d)(1).

''(f) ONGOING REVIEW.—Not earlier than 3 years after the termination of the Board under subsection (e), and not earlier than every 3 years thereafter, the Secretary, in consultation with the National Association of Insurance Commissioners and the entities and constituencies represented on the Board and the Advisory Panel, shall prepare and submit to the appropriate committees of Congress a report that assesses the effect of the harmonized standards applied under this section on access, cost, and health insurance market functioning. The Secretary may, based on such report and applying the process established for certification under subsection (d)(2)(B), in consultation with the National Association of Insurance Commissioners and the entities and constituencies represented on the Board and the Advisory Panel, update the harmonized standards through notice and comment rulemaking.

''(g) PUBLICATION.—

''(1) LISTING.—The Secretary shall maintain an up to date listing of all harmonized standards certified under this section on the Internet website of the Department of Health and Human Services.

''(2) SAMPLE CONTRACT LANGUAGE.—The Secretary shall publish on the Internet website of the Department of Health and Human Services sample contract language that incorporates the harmonized standards certified under this section, which may be used by insurers seeking to qualify as an eligible insurer. The types of harmonized standards that shall be included in sample contract language are the standards that are relevant to the contractual bargain between the insurer and insured.

''(h) STATE ADOPTION AND ENFORCEMENT.—Not later than 18 months after the certification by the Secretary of harmonized standards under this section, the States may adopt such harmonized standards (and become an adopting State) and, in which case, shall enforce the harmonized standards pursuant to State law.

**''SEC. 2933. APPLICATION AND PREEMPTION.**

''(a) SUPERSEDING OF STATE LAW.—

''(1) IN GENERAL.—The harmonized standards certified under this subtitle and applied as provided for in section 2933(d)(3), shall supersede any and all State laws of a nonadopting State insofar as such State laws relate to the areas of harmonized standards as applied to an eligible insurer, or health insurance coverage issued by a eligible insurer, including with respect to coverage issued to a small business health plan, in a nonadopting State.

''(2) NONADOPTING STATES.—This subtitle shall supersede any and all State laws of a nonadopting State (whether enacted prior to or after the date of enactment of this title) insofar as they may—

''(A) prohibit an eligible insurer from offering, marketing, or implementing health insurance coverage consistent with the harmonized standards; or

''(B) have the effect of retaliating against or otherwise punishing in any respect an eligible insurer for offering, marketing, or implementing health insurance coverage consistent with the harmonized standards under this subtitle.

''(b) SAVINGS CLAUSE AND CONSTRUCTION.—

''(1) NONAPPLICATION TO ADOPTING STATES.—Subsection (a) shall not apply with respect to adopting States.

''(2) NONAPPLICATION TO CERTAIN INSURERS.—Subsection (a) shall not apply with respect to insurers that do not qualify as eligible insurers who offer health insurance coverage in a nonadopting State.

''(3) NONAPPLICATION WHERE OBTAINING RELIEF UNDER STATE LAW.—Subsection (a)(1) shall not supersede any State law of a nonadopting State to the extent necessary to permit individuals or the insurance department of the State (or other State agency) to obtain relief under State law to require an eligible insurer to comply with the harmonized standards under this subtitle.

''(4) NO EFFECT ON PREEMPTION.—In no case shall this subtitle be construed to limit or affect in any manner the preemptive scope of sections 502 and 514 of the Employee Retirement Income Security Act of 1974. In no case shall this subtitle be construed to create any cause of action under Federal or State law or enlarge or affect any remedy available under the Employee Retirement Income Security Act of 1974.

''(c) EFFECTIVE DATE.—This section shall apply beginning on the date that is 18 months after the date on harmonized standards are certified by the Secretary under this subtitle.

**''SEC. 2934. CIVIL ACTIONS AND JURISDICTION.**

''(a) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction over civil actions involving the interpretation of this subtitle.

''(b) ACTIONS.—An eligible insurer may bring an action in the district courts of the United States for injunctive or other equitable relief against any officials or agents of a nonadopting State in connection with any conduct or action, or proposed conduct or action, by such officials or agents which violates, or which would if undertaken violate, section 2933.

''(c) DIRECT FILING IN COURT OF APPEALS.—At the election of the eligible insurer, an action may be brought under subsection (b) directly in the United States Court of Appeals for the circuit in which the nonadopting State is located by the filing of a petition for review in such Court.

''(d) EXPEDITED REVIEW.—

''(1) DISTRICT COURT.—In the case of an action brought in a district court of the United States under subsection (b), such court shall complete such action, including the issuance of a judgment, prior to the end of the 120-day period beginning on the date on which such action is filed, unless all parties to such proceeding agree to an extension of such period.

''(2) COURT OF APPEALS.—In the case of an action brought directly in a United States Court of Appeal under subsection (c), or in the case of an appeal of an action brought in a district court under subsection (b), such Court shall complete all action on the petition, including the issuance of a judgment, prior to the end of the 60-day period beginning on the date on which such petition is filed with the Court, unless all parties to such proceeding agree to an extension of such period.

''(e) STANDARD OF REVIEW.—A court in an action filed under this section, shall render a judgment based on a review of the merits of all questions presented in such action and shall not defer to any conduct or action, or proposed conduct or action, of a nonadopting State.

**''SEC. 2935. AUTHORIZATION OF APPROPRIATIONS; RULE OF CONSTRUCTION.**

''(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subtitle.

''(b) HEALTH SAVINGS ACCOUNTS.—Nothing in this subtitle shall be construed to create any mandates for coverage of any benefits below the deductible levels set for any health savings account-qualified health plan pursuant to section 223 of the Internal Revenue Code of 1986.''.

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**SA 3198.** Mr. CORNYN (for himself and Mr. LEMIEUX) submitted an amendment intended to be proposed to

amendment SA 2786 proposed by Mr. REID (for himself, Mr. BAUCUS, Mr. DODD, and Mr. HARKIN) to the bill H.R. 3590, to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes; which was ordered to lie on the table; as follows:

Strike all after the first word and insert the following:

**1. SHORT TITLE.**

This Act may be cited as the ''Seniors and Taxpayers Obligation Protection Act of 2009''.

**SEC. 2. REQUIRING THE SECRETARY OF HEALTH AND HUMAN SERVICES TO CHANGE THE MEDICARE BENEFICIARY IDENTIFIER USED TO IDENTIFY MEDICARE BENEFICIARIES UNDER THE MEDICARE PROGRAM.**

(a) PROCEDURES.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, in order to protect beneficiaries from identity theft, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish and implement procedures to change the Medicare beneficiary identifier used to identify individuals entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title so that such an individual's social security account number is not used.

(2) MAINTAINING EXISTING HICN STRUCTURE.—In order to minimize the impact of the change under paragraph (1) on systems that communicate with Medicare beneficiary eligibility systems, the procedures under paragraph (1) shall provide that the new Medicare beneficiary identifier maintain the existing Health Insurance Claim Number structure.

(3) PROTECTION AGAINST FRAUD.—The procedures under paragraph (1) shall provide for a process for changing the Medicare beneficiary identifier for an individual to a different identifier in the case of the discovery of fraud, including identity theft.

(4) PHASE-IN AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary may phase in the change under paragraph (1) in such manner as the Secretary determines appropriate.

(B) LIMIT.—The phase-in period under subparagraph (A) shall not exceed 10 years.

(C) NEWLY ENTITLED AND ENROLLED INDIVIDUALS.—The Secretary shall ensure that the change under paragraph (1) is implemented not later than January 1, 2010, with respect to any individual who first becomes entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title on or after such date.

(b) EDUCATION AND OUTREACH.—The Secretary shall establish a program of education and outreach for individuals entitled to, or enrolled for, benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title, providers of services (as defined in subsection (u) of section 1861 of such Act (42 U.S.C. 1395x)), and suppliers (as defined in subsection (d) of such section) on the change under paragraph (1).

(c) DATA MATCHING.—

(1) ACCESS TO CERTAIN INFORMATION.—Section 205(r) of the Social Security Act (42 U.S.C. 405(r)) is amended by adding at the end the following new paragraph:

''(9)(A) The Commissioner of Social Security shall, upon the request of the Secretary—

''(i) enter into an agreement with the Secretary for the purpose of matching data in the system of records of the Commissioner with data in the system of records of the Secretary, so long as the requirements of subparagraphs (A) and (B) of paragraph (3) are met, in order to determine—

''(I) whether a beneficiary under the program under title XVIII, XIX, or XXI is dead, imprisoned, or otherwise not eligible for benefits under such program; and

''(II) whether a provider of services or a supplier under the program under title XVIII, XIX, or XXI is dead, imprisoned, or otherwise not eligible to furnish or receive payment for furnishing items and services under such program; and

''(ii) include in such agreement safeguards to assure the maintenance of the confidentiality of any information disclosed and procedures to permit the Secretary to use such information for the purpose described in clause (i).

''(B) Information provided pursuant to an agreement under this paragraph shall be provided at such time, in such place, and in such manner as the Commissioner determines appropriate.

''(C) Information provided pursuant to an agreement under this paragraph shall include information regarding whether—

''(i) the name (including the first name and any family name or surname), the date of birth (including the month, day, and year), and social security number of an individual provided to the Commissioner match the information contained in the Commissioner's records, and

''(ii) such individual is shown on the records of the Commissioner as being deceased.''.

(2) INVESTIGATION BASED ON CERTAIN INFORMATION.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1128F the following new section:

**''SEC. 1128G. ACCESS TO CERTAIN DATA AND INVESTIGATION OF CLAIMS INVOLVING INDIVIDUALS WHO ARE NOT ELIGIBLE FOR BENEFITS OR ARE NOT ELIGIBLE PROVIDERS OF SERVICES OR SUPPLIERS.**

''(a) DATA AGREEMENT.—The Secretary shall enter into an agreement with the Commissioner of Social Security pursuant to section 205(r)(9).

''(b) INVESTIGATION OF CLAIMS INVOLVING CERTAIN INDIVIDUALS WHO ARE NOT ELIGIBLE FOR BENEFITS OR ARE NOT ELIGIBLE PROVIDERS OF SERVICES OR SUPPLIERS.—

''(1) IN GENERAL.—The Secretary shall, in the case where a provider of services or a supplier under the program under title XVIII, XIX, or XXI submits a claim for payment for items or services furnished to an individual who the Secretary determines, as a result of information provided pursuant to such agreement, is not eligible for benefits under such program, or where the Secretary determines, as a result of such information, that such provider of services or supplier is not eligible to furnish or receive payment for furnishing such items or services, conduct an investigation with respect to the provider of services or supplier. If the Secretary determines further action is appropriate, the Secretary shall refer the investigation to the Inspector General of the Department of Health and Human Services.

''(2) ASSESSMENT OF IMPLEMENTATION AND EFFECTIVENESS BY THE OIG.—The Inspector General of the Department of Health and Human Services shall test the implementation of the provisions of this section (including the implementation of the agreement under section 205(r)(9)) and conduct such period assessments of such implementation as the Inspector General determines necessary to determine the effectiveness of such implementation.''.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

**SEC. 3. MONTHLY VERIFICATION OF ACCURACY OF CLAIMS FOR PAYMENT FOR PHYSICIANS' SERVICES.**

(a) IN GENERAL.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—

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

''(7) The monthly verification of the accuracy of claims for payment for physicians' services under the system under subsection (i).''; and

(2) by adding at the end the following new subsection:

''(i) MONTHLY VERIFICATION OF ACCURACY OF CLAIMS FOR PAYMENT FOR PHYSICIANS' SERVICES.—

''(1) SYSTEM.—

''(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this subsection, the Secretary shall establish and implement a system to verify (electronically or otherwise, taking into consideration the administrative burden of such verification on physicians and group practices) on a monthly basis that the claims for payment under part B for physicians' services furnished in high risk areas are—

''(i) for physicians' services actually furnished by the physician or the physician's group practice; and

''(ii) otherwise accurate.

''(B) NO DETERMINATION OF MEDICAL NECESSITY.—In no case shall any verification conducted under the system established under subparagraph (A) include a determination of the medical necessity of the physicians' service.

''(2) VERIFICATION.—Under the system, the Secretary, at the end of each month, shall provide the physician or the group practice with a detailed list of such claims for payment that were submitted during the month in order for the physician or the group practice to review and verify the list. In providing the detailed list, the Secretary shall use the provider number of the physician or the group practice.

''(3) AUDITS.—The Secretary shall conduct audits of the review and verification by physicians and group practices of the detailed list provided under paragraph (2). Such audits shall assess whether the physician or group practice conducted such review and verification in a fraudulent manner. In the case where the Secretary determines such review and verification was conducted in a fraudulent manner, the Secretary shall recoup any payments resulting from the fraudulent review and verification and impose a civil money penalty in an amount determined appropriate by the Secretary on the physician or group practice who conducted the fraudulent review and verification. The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).

''(4) HIGH RISK AREAS DEFINED.—In this subsection, the term 'high risk area' means a county designated as a high risk area under subsection (j)(1).

''(5) REPORT BY THE SECRETARY.—Not later than 1 year after implementation of the system established under paragraph (1), the Secretary shall submit a report to Congress on the progress of such implementation. Such report shall include recommendations—

''(A) on how to improve such implementation, including whether the system should be expanded to include verification of claims for payment under part B for physicians' services furnished in additional areas; and

''(B) for such legislation and administrative action as the Secretary determines appropriate.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out the amendments made by this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2010 through 2014.

**SEC. 4. DETECTION OF MEDICARE FRAUD AND ABUSE.**

(a) IN GENERAL.—Section 1893 of the Social Security Act (42 U.S.C. 1395ddd), as amended by section 3, is amended—

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

''(8) Implementation of fraud and abuse detection methods under subsection (j).'';

(2) in subsection (c), by adding at the end of the flush matter following paragraph (4), the following new sentence ''In the case of an activity described in subsection (b)(8), an entity shall only be eligible to enter into a contract under the Program to carry out the activity if the entity is selected through a competitive bidding process in accordance with subsection (j)(3).''; and

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

''(j) DETECTION OF MEDICARE FRAUD AND ABUSE.—

''(1) ESTABLISHMENT OF SYSTEM TO IDENTIFY COUNTIES MOST VULNERABLE TO FRAUD.—Not later than 6 months after the date of enactment of this subsection, the Secretary shall establish a system to identify the 50 counties most vulnerable to fraud with respect to items and services furnished by providers of services (other than hospitals and critical access hospitals) and suppliers based on the degree of county-specific reimbursement and analysis of payment trends under this title. The Secretary shall designate the counties identified under the preceding sentence as 'high risk areas'.

''(2) FRAUD AND ABUSE DETECTION.—

''(A) INITIAL IMPLEMENTATION.—The Secretary shall establish procedures for the implementation of fraud and abuse detection methods under this title with respect to items and services furnished by such providers of services and suppliers in high risk areas designated under paragraph (1) (and, beginning not later than 18 months after the date of enactment of this subsection, with respect to items and services furnished by such providers of services and suppliers in areas not so designated) including the following:

''(i) In the case of a new applicant to be a supplier, a background check, a pre-enrollment site visit, and random unannounced site visits after enrollment.

''(ii) Not less than 5 years after the date of enactment of this subsection, in the case of a supplier who is not a new applicant, re-enrollment under this title, including a background check and a site-visit as part of the application process for such re-enrollment, and random unannounced site visits after such re-enrollment.

''(iii) Data analysis to establish prepayment claim edits designed to target the claims for payment under this title for such items and services that are most likely to be fraudulent.

''(iv) Prepayment benefit integrity reviews for claims for payment under this title for such items and services that are suspended as a result of such edits.

''(B) REQUIREMENT FOR PARTICIPATION.—In no case may a provider of services or supplier who does not meet the requirements under subparagraph (A) (including, in the case of a supplier, the requirement of a background check) participate in the program under this title.

''(C) BACKGROUND CHECKS.—The Secretary shall determine the extent of the background check conducted under subparagraph (A), including whether—

''(i) a fingerprint check is necessary;

''(ii) a background check shall be conducted with respect to additional employees, board members, contractors or other interested parties of the supplier; and

''(iii) any additional national background checks regarding exclusion from participation in Federal programs (such as the program under this title, title XIX, or title XXI), adverse actions taken by State licensing boards, bankruptcies, outstanding taxes, or other indications identified by the Inspector General of the Department of Health and Human Services are necessary.

''(D) EXPANDED IMPLEMENTATION.—Not later than 24 months after the date of enactment of this subsection, the Secretary shall establish procedures for the implementation of such fraud and abuse detection methods under this title with respect to items and services furnished by all providers of services and suppliers, including those not in high risk areas designated under paragraph (1).

''(3) COMPETITIVE BIDDING.—In selecting entities to carry out this subsection, the Secretary shall use a competitive bidding process.

''(4) REPORT TO CONGRESS.—The Secretary shall submit to Congress an annual report on the effectiveness of activities conducted under this subsection, including a description of any savings to the program under this title as a result of such activities and the overall administrative cost of such activities and a determination as to the amount of funding needed to carry out this subsection for subsequent fiscal years, together with recommendations for such legislation and administrative action as the Secretary determines appropriate.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—To carry out the amendments made by this section, there are authorized to be appropriated—

(1) such sums as may be necessary, not to exceed $50,000,000, for each of fiscal years 2010 through 2014; and

(2) such sums as may be necessary, not to exceed an amount the Secretary determines appropriate in the most recent report submitted to Congress under section 1893(j)(4) of the Social Security Act, as added by subsection (a), for each subsequent fiscal year.

**SEC. 5. USE OF TECHNOLOGY FOR REAL-TIME DATA REVIEW.**

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

**''SEC. 1899. USE OF TECHNOLOGY FOR REAL-TIME DATA REVIEW.**

''(a) IN GENERAL.—The Secretary of Health and Human Services shall establish procedures for the use of technology (similar to that used with respect to the analysis of credit card charging patterns) to provide real-time data analysis of claims for payment under the Medicare program under title XVIII of the Social Security Act to identify and investigate unusual billing or order practices under the Medicare program that could indicate fraud or abuse.

''(b) COMPETITIVE BIDDING.—The procedures established under subsection (a) shall ensure that the implementation of such technology is conducted through a competitive bidding process.''.

**SEC. 6. EDITS ON 855S MEDICARE ENROLLMENT APPLICATION.**

Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)) is amended by adding at the end the following new paragraph:

''(22) CONFIRMATION WITH NATIONAL SUPPLIER CLEARINGHOUSE PRIOR TO PAYMENT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall establish procedures to require carriers, prior to paying a claim for payment for durable medical equipment, prosthetics, orthotics, and supplies under this title, to confirm with the National Supplier Clearinghouse—

''(i) that the National Provider Identifier of the physician or practitioner prescribing or ordering the item or service is valid and active;

''(ii) that the Medicare identification number of the supplier is valid and active; and

''(iii) that the item or service for which the claim for payment is submitted was properly identified on the CMS–855S Medicare enrollment application.

''(B) ONLINE DATABASE FOR IMPLEMENTATION.—Not later than 18 months after the date of enactment of this paragraph, the Secretary shall establish an online database similar to that used for the National Provider Identifier to enable providers of services, accreditors, carriers, and the National Supplier Clearinghouse to view information on specialties and the types of items and services each supplier has indicated on the CMS–855S Medicare enrollment application submitted by the supplier.

''(C) NOTIFICATION OF CLAIM DENIAL AND RESUBMISSION.—In the case where a claim for payment for durable medical equipment, prosthetics, orthotics, and supplies under this title is denied because the item or service furnished does not correctly match up with the information on file with the National Supplier Clearinghouse—

''(i) the National Supplier Clearinghouse shall—

''(I) provide the supplier written notification of the reason for such denial; and

''(II) allow the supplier 60 days to provide the National Supplier Clearinghouse with appropriate certification, licensing, or accreditation; and

''(ii) the Secretary shall waive applicable requirements relating to the time frame for the submission of claims for payment under this title in order to permit the resubmission of such claim if payment of such claim would otherwise be allowed under this title.''.

**SEC. 7. STRATEGIC PLAN FOR THE DEVELOPMENT OF A SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.**

Section 1834(a) of the Social Security Act (42 U.S.C. 1395m(a)), as amended by section 6(a), is amended by adding at the end the following new paragraph:

''(23) STRATEGIC PLAN FOR THE DEVELOPMENT OF A SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall develop a strategic plan for the development and implementation of a serial number tracking system for durable medical equipment.

''(B) SERIAL NUMBER TRACKING SYSTEM FOR DURABLE MEDICAL EQUIPMENT.—The plan developed under subparagraph (A) shall include mechanisms to ensure that an item of durable medical equipment which has not been issued a unique identifier under the unique device identification system established under section 519(f) of the Federal Food, Drug, and Cosmetic Act bears a unique identifier, unless the Secretary already requires an alternative placement or provides an exception for a particular item or type of durable medical equipment under such section 519(f).

''(C) PROVISION OF UNIQUE IDENTIFIER TO THE SECRETARY.—The plan developed under subparagraph (A) shall include appropriate mechanisms for manufacturers of items of durable medical equipment to submit to the Secretary unique identifiers issued under subparagraph (B) or such section 519(f) with

respect to such items. The plan shall include mechanisms for the Secretary to provide for the storage of such unique identifier in accordance with subparagraph (F)(i).

''(D) REQUIREMENTS FOR MANUFACTURERS AND WHOLESALERS.—The plan developed under subparagraph (A) shall include mechanisms for manufacturers of items of durable medical equipment, or, in the case where a wholesaler provides an item of durable medical equipment to suppliers, wholesalers, to—

''(i) upon issuing an item to a supplier, develop a product description for the item which includes—

''(I) the unique identifier of the item;

''(II) the specific Healthcare Common Procedure Coding System (HCPCS) code for the item;

''(III) the name of the supplier the item was shipped to; and

''(IV) the supplier's Medicare identification number; and

''(ii) submit the product description developed under clause (i) to the Secretary for storage in the unique identifier database in accordance with subparagraph (F)(i).

''(E) REQUIREMENTS FOR SUPPLIERS.—The plan developed under subparagraph (A) shall include mechanisms to ensure that suppliers of items of durable medical equipment—

''(i) upon issuing the item to a beneficiary, note the unique identifier of such item on—

''(I) the claim form submitted for such item; and

''(II) when appropriate or otherwise required, the detailed product description of the item;

''(ii) in the case where the item is issued to a beneficiary on a rental basis, designate the unique identifier with an 'R' after the number to indicate that the item was rented, and not purchased, by the beneficiary; and

''(iii) upon return of the item to the supplier, notify the Secretary—

''(I) before reissuing that item and resubmitting that number on such a claim form; or

''(II) upon resubmitting that number on such a claim form.

''(F) RESPONSIBILITIES FOR THE SECRETARY.—

''(i) MAINTENANCE OF DATABASE OF SERIAL NUMBERS.—The plan developed under subparagraph (A) shall include the responsibility of the Secretary to establish and maintain a database containing the unique identifiers submitted by manufacturers of items of durable medical equipment under subparagraph (C).

''(ii) PAYMENT.—

''(I) LIMITATION.—Subject to subclause (II), the plan developed under subparagraph (A) shall include mechanisms to ensure that payment may only be made for an item of durable medical equipment if the unique identifier on the claim form submitted for such item matches the unique identifier submitted by the manufacturer of such item under subparagraph (C).

''(II) EXCEPTION TO LIMITATION AFTER VERIFICATION OF RECEIPT.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in the case where the unique identifier is not on the claim form submitted for such item or does not match the unique identifier submitted by the manufacturer of such item under subparagraph (C), no payment shall be made under this part for the item of durable medical equipment until the Secretary has verified that the beneficiary has received such item in accordance with subclause (IV).

''(III) DUPLICATIVE UNIQUE IDENTIFIERS.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in the case where a unique identifier is submitted on more than 1 claim form submitted for such an item and there is no indication from the supplier that the item of durable medical equipment has been returned by 1 beneficiary and is now being used by another beneficiary, no payment shall be made under this part for such item of durable medical equipment unless the Secretary has verified that the beneficiary has received such item in accordance with subclause (IV).

''(IV) VERIFICATION.—The plan developed under subparagraph (A) shall include provisions for the Secretary to conduct any verification required under subclause (II) or (III) within 30 days after receipt by the Secretary of the relevant claim form. In the case where such verification is not completed within such time period, the Secretary shall pay such claim, complete the verification, and, in the case where the Secretary has entered into a contract with an entity for the conduct of such verification, recover any payments that would not have been made if the verification had been completed within such time period from such entity.

''(iii) QUALITY CONTROL AUDITS.—The plan developed under subparagraph (A) shall include a requirement that the Secretary conduct quality control audits to identify unusual billing patterns with respect to items of durable medical equipment for which payment is made under this part and may provide that the Secretary conduct unannounced site visits or commission other agencies to conduct such site visits as part of such quality control audits.

''(iv) NO USE AS A PRECERTIFICATION MECHANISM.—The plan developed under subparagraph (A) shall include mechanisms to ensure that in no case shall a unique identifier issued under subparagraph (B) or section 519(f) of the Federal Food, Drug, and Cosmetic Act be used as a precertification mechanism for the supply of an item of durable medical equipment or the payment of a claim for such an item under this part.''.

**SEC. 8. GAO STUDY AND REPORT ON EFFECTIVENESS OF SURETY BOND REQUIREMENTS FOR SUPPLIERS OF DURABLE MEDICAL EQUIPMENT IN COMBATING FRAUD.**

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the effectiveness of the surety bond requirement under section 1834(a)(16) of the Social Security Act (42 U.S.C. 1395m(a)(16)) in combating fraud.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report containing the results of the study conducted under subsection (a), together with recommendations for such legislation and administrative action as the Comptroller General determines appropriate.

## NOTICE OF HEARING

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a business meeting has been scheduled before Committee on Energy and Natural Resources. The business meeting will be held on Wednesday, December 16, 2009, at 11:30 a.m., in room SD–366 of the Dirksen Senate Office.

The purpose of the business meeting is to consider pending legislation.

For further information, please contact Sam Fowler at (202) 224–7571 or Amanda Kelly at (202) 224–6836.

## PRIVILEGES OF THE FLOOR

Mrs. MURRAY. Mr. President, I ask unanimous consent that Richard Burkard, a detailee from the Government Accountability Office to the Appropriations Committee, be granted the privilege of the floor during consideration of the consolidated appropriations bill.

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

## ORDERS FOR SATURDAY, DECEMBER 12, 2009

Mr. MENENDEZ. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m., Saturday, December 12; 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 the conference report accompanying H.R. 3288, the consolidated appropriations bill, as provided for under the previous order.

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

## PROGRAM

Mr. MENENDEZ. Mr. President, at 9:30 a.m., the Senate will proceed to a cloture vote on the consolidated appropriations conference report. If cloture is invoked, the Senate will proceed to vote on the adoption of the conference report at 2 p.m. on Sunday.

## ORDER FOR ADJOURNMENT

Mr. MENENDEZ. Finally, I ask unanimous consent that following the remarks of the distinguished Senator from Nevada, Senator ENSIGN, the Senate adjourn under the previous order.

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

Mr. MENENDEZ. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. I ask unanimous consent that I be able to speak as long as I take tonight and then following my comments, the Senate stand in adjournment.

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

Mr. ENSIGN. Mr. President, first, I wish to say to my friend from New Jersey, I appreciate the remarks he has made. I have stood with the Cuban people and especially with the dissidents down there for years, many times with my friend from New Jersey. I appreciate the issue he is bringing up and fighting for those folks.

There have been those cases over the years where American voices have reached all the way into those gulags, whether it was the old Soviet Union or North Korea or wherever it may be. America being the beacon of hope for so many people around the world, it is critical that Members of this body, as well as the President of the United

States, speak out for freedom and speak out for those people to give them hope that there are people in America who are listening and who are paying attention to them, so they will keep fighting for freedom in their own country. So I appreciate the comments the Senator from New Jersey made tonight.

OMNIBUS APPROPRIATIONS

I rise tonight, though, to speak about the legislation that is before the Senate. It is the Consolidated Appropriations Act or, as some people call it, the mini bus. This is a $447 billion bill. Around here, that seems like a small number. I believe this spending bill represents yet another step in the wrong direction for our country. I believe this legislation is only more of the same old recipe of fiscal irresponsibility that guides the majority in Congress. In a time of sky-high budget deficits and staggering debt, the American people are now demanding a better way forward.

I wish to make it clear for the record what this legislation does. As a Senate Budget Committee analysis shows, this bill increases spending by 12 percent over last year's fiscal year for the six spending bills that are wrapped up in this legislation. When we look at each of these bills separately, the numbers are even more shocking. The State Department received a 33-percent increase over last year. Transportation, Housing, and Urban Development received a 23-percent increase over last year. Keep in mind that these accounts together received more than $60 billion of increase in the stimulus bill that was signed earlier this year.

When we look at the gritty details, for example, at individual programs, the numbers are just as bad. The bill increases the Corporation for National Community Service by 30 percent and includes a 41-percent increase for bilateral economic assistance. There is also a 9-percent increase in Amtrak, and keep in mind that Amtrak got a $1.3 billion extra amount of money in the stimulus bill this year.

These spending increases are set against a dire economic picture. According to the nonpartisan Congressional Budget Office, in fiscal year 2010, the deficit will be $1.4 trillion. Right now, American families are hurting. I know my home State of Nevada has experienced some of the highest unemployment levels in the country—13 percent, according to the Department of Labor. In talking to constituents back home, I can guarantee my colleagues it is actually much higher. We have a situation where because people quit looking for jobs, the unemployment rate is understated. In my State is probably closer to 20 percent.

Democrats expect this bloated spending bill to receive what has become a customary rubberstamp when it comes to spending in this town. But I don't see how a $300,000 earmark to Carnegie Hall in New York City or $250,000 for a bike path in Michigan can be considered responsible spending during the economic times we are in. There are over 5,000 earmarks in this omnibus bill, this mini bus bill, whatever you want to call it, that is before us today—5,000 earmarks.

Not surprisingly, with all this spending, the majority in Congress must increase the debt limit. The debt limit is the limit set by Congress of how much debt our country can take on. This is similar, if you think about it, to your credit card limit. Right now, the debt limit is set at a little over $12 trillion—trillion. Let me take a little side note. We speak about trillions of dollars anymore as though it is nothing. Well, to put $1 trillion in a little bit of perspective—I have said this on this floor before—if you spend $1 million a day, 7 days a week, 365 days a year, to get to $1 trillion, you would have had to start spending that $1 million a day every day from the time Jesus was born, spend it until now, and you still wouldn't be at your first $1 trillion. Yet our country already has $1 trillion in debt.

Anyway, the majority is raising the debt limit. This would be akin to taking your credit card and maxing it out but then going to the bank and saying: By the way, can I increase my credit limit by 20 percent? Oh, by the way, I have no idea how I am going to pay it back, except maybe my children will be able to pay it back someday. That is exactly what this Congress is doing. We are saying: We can't pay this debt back. There is no way we can pay this debt back. Maybe our children, maybe our grandchildren can pay it back.

Americans across the country are going through tough times and they are doing what many in this body are unwilling to do. They are tightening their belts and cutting back on spending. According to the Federal Reserve, household debt has been reduced by $351 billion in the last quarter. This is the largest quarterly decline in our Nation's history. That is right. American families see the danger of fiscal irresponsibility and they are cutting back on borrowing the money they may have trouble paying back. State governments, local governments, businesses are doing the same as American families: They are cutting back.

We also have interest we must pay on this debt. Just like the interest you pay on your credit card when you carry a balance, Americans pay interest on the debt this country continues to accumulate. CBO estimates today the annual interest on this Nation's debt last year was around $179 billion—a big number, $179 billion. A lot of good could be done with that if we weren't just spending that, paying the interest on the debt. Well, that $179 billion by the year 2019 is projected to go to almost $800 billion, not including any of the new spending programs that are being proposed out there—$800 billion a year. As much as we are spending on our national defense will just be interest on our debt.

My friends on the other side of the aisle have made it a habit to come down to the Senate floor and say: Well, where were Republicans when President Bush was in office, adding to the debt, increasing the deficit? Well, I was right here saying many of the same things I am saying today. Not only did I vote against many of the spending bills that were passed during the previous administration, but I would have liked to have seen President Bush put his foot down and veto some of these bills and force Congress to cut back on out-of-control spending.

If President Obama is worried about the debt that his children and grandchildren are going to inherit, he has a hard time showing it. It seems to me the President is in denial regarding the fiscal train wreck that is taking place in this country.

In July of this year, President Obama said he understands the concern about the debt and admitted his recovery plan has added to the growing debt. But he stated at the time that now is not the time to tighten our belt and stop spending.

In November, however, President Obama said:

> I think it is important, though, to recognize that if we keep adding to the debt, even in the midst of the recovery, that at some point, people could lose confidence in the U.S. economy in a way that could actually lead to a double-dip recession.

First, the President says we must keep spending, even during the recession. Then he says that continued spending and increasing the debt during the recession could lead to a lack of confidence in the U.S. economy by the American people and by people around the world.

The President remains in his state of denial because before us is a $447 billion bill that he will likely sign into law.

I challenge President Obama to show leadership and veto this bill. Say to the Senate and the House of Representatives: Get your fiscal house in order. It is time we show responsibility to our children and grandchildren. Spending this year has added up a little bit. The TARP—an additional $350 billion was added to the TARP program this year. This has now become a slush fund. The stimulus bill was $787 billion. It was supposed to not allow the unemployment rate to go over 8 percent. We now know the unemployment rate is 10 percent. There were supposed to be millions of jobs saved or created. That certainly doesn't appear to be the case. In this stimulus bill, we see that $6 million will go to a PR firm whose head is a former pollster for a high-ranking member in the Obama administration. Again, that was for $6 million. That was to educate folks on what it means to go from analog television to digital. I don't know if anybody watched TV this last year, but the cable companies, the broadcasters, spent tens and tens of millions of dollars to tell folks about the transition and what it meant to

transition from analog to digital. Walmart and other companies that were selling the converter boxes were telling people about it. The government didn't need to spend this money. The private sector was handling it just fine.

That is just one small example of the wasteful spending that was part of the stimulus bill. My State has a 13-percent unemployment rate, as I mentioned before. So the stimulus bill certainly doesn't seem to have helped my State.

I want to show you what we are facing with this debt. Under the President's budget that was passed earlier this year, the debt will double within 5 years, and it will actually triple within 10 years. The debt that this country is taking on will double within 5 years and triple within 10 years.

Now we are going to add a $2.5 trillion health care bill, which is what the spending will be when it is fully implemented. The other side of the aisle has said that it actually decreases the deficit. That is part of the smoke and mirrors. You get all of the tax increases and the Medicare cuts in the first few years, but the actual benefits don't start until 2014. So if you look at a true 10-year picture, the spending in the bill is about $2.5 trillion.

On top of that, the bill I am talking about today, the $447 billion ''minibus'' of appropriations bills, is a 12-percent increase from last year to this year. When are we going to get the message from the American people? In the past, it doesn't seem like they cared that much about the debt and deficit. We are hearing about it all across the country today. That is the reason you're seeing in poll after poll that it is one of the big things the American people are concerned about now. I am happy they are finally paying attention. I just hope this body starts paying attention to what the American people are saying.

Mr. President, now I want to turn my attention to the DC Opportunity Scholarship Program and how the bill that is before us would eliminate this vital and successful program.

This omnibus bill would accomplish this by restricting the enrollment of any new students and lead to the end of the program. As many of you know, the DC Opportunity Scholarship Program is part of a comprehensive strategy designed to provide a quality education for every child in the District, regardless of income or neighborhood.

The District roundly supports this program. DC's mayor, Adrian Fenty, testified in favor of the program. He has sent letters of support to Members of Congress regarding the scholarship program.

Other DC leaders have also expressed their support, including City Council Chairman Vincent Gray, DC Public School Chancellor Michelle Rhee, and former Mayor Anthony Williams.

The residents support the program too. A Greater Washington Urban League Poll found that almost 70 percent of DC residents support this education funding.

Although the Chancellor of Public Schools, Michelle Rhee, has made much progress reforming DC's public schools, there is still much work to do.

The statistics paint a grim picture. According to the Department of Education's National Assessment of Education, DC ranked last in the Nation based on fourth and eighth grade reading assessments.

In 2007, only 14 percent of fourth graders—14 percent—were proficient in reading and math in DC schools. DC's overall performance on SATs is not much better. Reading scores are 32 points below the national average, while math scores are 60 points below the national average.

DC has some of the highest levels of per-pupil spending in the Nation. Unfortunately, this large investment is bearing little fruit.

The biggest tragedy of all is that a quality education represents the best chance for most of these children to escape the cycle of poverty that so many of their families are in today. For many, the DC Opportunity Scholarship Program provides that chance.

The average household income of participating families that get these scholarships is $22,000 a year for a family of four. All participating students come from families below 185 percent of the poverty line. Nearly 100 percent of the participating students are minorities.

Eighty-six percent of the scholarship students would otherwise be assigned to attend a DC public school that did not meet the ''adequate yearly progress'' standards in 2006 and 2007 and are in need of improvement, corrective action, or restructuring.

Unfortunately, many of the Democrats in this body continue to put politics ahead of a program that is helping to ensure low-income children have the ability to attend safe and effective schools.

Some opponents of the DC Opportunity Scholarship say the program isn't effective. They say it doesn't work and only diverts money from DC public schools. I simply disagree, and I believe the facts paint a very different picture, a more accurate representation of the success of the scholarship program.

According to Dr. Patrick Wolf at the University of Arkansas, the principal investigator studying the scholarship program, this program is working.

DC opportunity scholarship recipients show the largest achievement impact in reading of any education policy program yet evaluated in a randomized control trial. These randomized trials are the gold standard when it comes to figuring out whether a program works.

While the numbers paint an encouraging picture, I think 90 percent of parents of children in the program who say that the scholarship program gives their child a chance at a quality and safe education is a better measure.

David Martinez, whose daughters, Brenda and Katherine, already attend Sacred Heart through the scholarship program, wanted his youngest daughter, Heidi, to enroll as well.

David writes:

> I wanted my 5-year-old daughter, Heidi, to attend a private school, as well. I was overjoyed when we received a letter—telling us that the scholarship had been granted. Then, two weeks later—because President Obama, the Congress, and Education Secretary Arne Duncan sided against my daughter—we received another letter. This letter said that Heidi wouldn't receive her scholarship. We were devastated when we read the letter.

Patricia Williams writes of her son Fransoir. Before the program, she worried how she could help Fransoir get a good education and make sure he was safe and supervised. Patricia hopes that all her children attend college in the future.

Despite the fact that the parents and students involved in the DC Opportunity Scholarship have pleaded with lawmakers to preserve the program, Democrats continue to advocate eliminating the opportunity for more than 1,700 students to continue attending private schools.

When you look close at the data on DC schools, it is no wonder that the DC Opportunity Scholarship parents are so vocal about keeping the program alive. Per-pupil expenditures in the District public schools are more than $14,000 per pupil per year, and DC class size is one of the lowest, 14 to 1 student-teacher ratio. Yet reading scores continue to languish at or near the bottom in every national assessment.

Recent data shows that 69 percent of fourth graders are reading below basic levels, as defined by the Department of Education in Washington, DC.

DC students in DC public schools rank last in the Nation in both SAT and ACT scores.

Beyond the low performance in the classrooms, DC schools are often violent and dangerous. A Federal Government study found that 12 percent of DC students were threatened or injured by a weapon on school property during a recent school year—well above the national average.

Would most Americans put up with those kinds of statistics, or would they fight for change? This body has to fight for the students and the parents in Washington, DC.

According to the Washington Post, Anacostia High School alone saw 61 violent offenses, including 3 sexual assaults and 1 instance of the use of a deadly weapon.

Perhaps these facts are why President Obama has chosen to enroll both of his daughters in a private school in Washington.

Clearly, we can do better, and the DC Opportunity Scholarship Program is a means to achieve better results for low-income children in Washington.

There are promising signs that this program works. My colleagues, including Senators on both sides of the aisle—Senators LIEBERMAN, COLLINS,

FEINSTEIN, VOINOVICH, BYRD, and ALEXANDER—have joined in a bipartisan bill to improve and extend this successful program.

This program should not see its death through the appropriations process.

In conclusion, what this ''minibus''—the bill before us today—is doing is rolling over the future of this country. Call it what you want—minibus, omnibus, or 18 wheeler—it is carrying a load of debt and wasteful spending and government irresponsibility. It is a reminder to the American people that while they balance their budgets and scrape to pay their bills and try to save something for the future, the Federal Government continues its reckless shopping spree and just prints the money. This is not what we are sent here to do. I hope the President sees that and vetoes this irresponsible legislation.

I yield the floor.

## ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m. tomorrow.

There being no objection, the Senate, at 7:44 p.m., adjourned until Saturday, December 12, 2009, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate:

### TENNESSEE VALLEY AUTHORITY

MARILYN A. BROWN, OF GEORGIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE TENNESSEE VALLEY AUTHORITY FOR A TERM EXPIRING MAY 18, 2012, VICE SUSAN RICHARDSON WILLIAMS, TERM EXPIRED.

### NUCLEAR REGULATORY COMMISSION

WILLIAM CHARLES OSTENDORFF, OF VIRGINIA, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 30, 2011, VICE DALE KLEIN, RESIGNED.

### DEPARTMENT OF DEFENSE

SHARON E. BURKE, OF MARYLAND, TO BE DIRECTOR OF OPERATIONAL ENERGY PLANS AND PROGRAMS. (NEW POSITION)

### FOREIGN SERVICE

THE FOLLOWING-NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASSES STATED.

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA,

### DEPARTMENT OF STATE

SEAN J. MCINTOSH, OF NEW YORK

FOR APPOINTMENT AS FOREIGN SERVICE OFFICER OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

### DEPARTMENT OF STATE

JILLIAN FRUMKIN BONNARDEAUX, OF VIRGINIA
LYNDA J. HINDS, OF CALIFORNIA

THE FOLLOWING—NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

### DEPARTMENT OF STATE

RYAN AIKEN, OF UTAH
R. ANDREW ALLEN, OF GEORGIA
NATALIA ALMAGUER, OF FLORIDA
LAURA AYLWARD, OF WASHINGTON
JENNIFER AZARI, OF NEW JERSEY
KARA B. BABROWSKI, OF FLORIDA
ZACHARY BAILEY, OF VIRGINIA
JUDITH E. BAKER, OF MASSACHUSETTS
ESTHER F. BELL, OF RHODE ISLAND
IRMIE KEELER BLANTON III, OF GEORGIA
CHELAN J. BLISS, OF WASHINGTON
DAVID SEAN BOXER, OF VIRGINIA
ALEXIA MCNEAL BRANCH, OF CALIFORNIA
RAVI FRANKLIN BUCK, OF MISSOURI
MATTHEW BUSHELL, OF CONNECTICUT
OMAR CARDENTEY, OF FLORIDA
DANIEL C. CARROLL, OF HAWAII
ANDREW N. CARUSO, OF VIRGINIA
MICHAEL P. CASEY, OF VIRGINIA
BENJAMIN COCKBURN, OF GEORGIA
JOANNE ILENE COSSITT, OF CONNECTICUT
ROCCO COSTA, OF MARYLAND
CHRISTOPHER B. CREAGHE, OF COLORADO
ROBIN S. CROMER, OF SOUTH CAROLINA
GAETAN DAMBERG-OTT, OF MINNESOTA
JESSICA RENEE DANCEL, OF COLORADO
SCOTT B. DARGUS, OF WASHINGTON
PETER JOHN DAVIDIAN, OF OHIO
REBEKAH E. DAVIS, OF THE DISTRICT OF COLUMBIA
JASON DYER, OF NEW MEXICO
MARCUS GEORGE FALION, OF TENNESSEE
GAIL HEGARTY FELL, OF NEW YORK
JOSEPH ANTON FETTE, OF CALIFORNIA
AARON ELLIOTT GARFIELD, OF CALIFORNIA
PHILLIP M. GATINS, OF FLORIDA
SARAH GJORGJIJEVSKI, OF VIRGINIA
SAMUEL EVERETT GOFFMAN, OF ILLINOIS
DANIEL ROSS HARRIS, OF CALIFORNIA
NOEL HARTLEY, OF THE DISTRICT OF COLUMBIA
JANEL MARGARET HEIRD, OF MICHIGAN
PEPIJN M. HELGERS, OF THE DISTRICT OF COLUMBIA
CHRISTOPHER D. HELMKAMP, OF VIRGINIA
WILLIAM N. HOLTON, JR., OF ILLINOIS
TRAVIS A. HUNNICUTT, OF VIRGINIA
DONNA J. HUSS, OF INDIANA
MOUNIR E. IBRAHIM, OF NEW YORK
AMENAGHAMWON IYI-EWEKA, OF WISCONSIN
DANA MARIE JEA, OF FLORIDA
JOANNA TRACY KATZMAN, OF NEW JERSEY
JENNIFER ANNE KELLEY, OF THE DISTRICT OF COLUMBIA
CRAIG S. KENNEDY, OF GEORGIA
THOMAS D. KOHL, OF FLORIDA
JACK C. LAMBERT, OF OREGON
BRENT JOSEPH LAROSA, OF MARYLAND
ALEXI LEFEVRE, OF FLORIDA
IAN MACKENZIE, OF MASSACHUSETTS
JUAN D. MARTINEZ, OF NEW YORK
KELLY JEAN MCANERNEY, OF PENNSYLVANIA
MAUREEN A. MCNICHOLL, OF ILLINOIS
GREGORY MEIER, OF CALIFORNIA
MARC A.J. MELINO, OF WASHINGTON
MATAN MEYER, OF FLORIDA
BENJAMIN J. MILLS, OF NEW MEXICO
SEAN P. MOFFATT, OF MARYLAND
CHARLES VINCENT MURPHY, OF CALIFORNIA
LINDA A. NEILAN, OF NEW JERSEY
EMILY YASMIN NORRIS, OF MASSACHUSETTS
ELIZABETH CURRAN O'ROURKE, OF ILLINOIS
MARY LILLIAN PELLEGRINI, OF NEW HAMPSHIRE
LISA MARIE PETZOLD, OF MASSACHUSETTS
KATHRYN STANSBURY PORCH, OF MARYLAND
MARIA DEL PILAR QUIGUA, OF MASSACHUSETTS
RYAN M. QUINN, OF WISCONSIN
SCOTT RULON RASMUSSEN, OF WASHINGTON
LEA PALABRICA RIVERA, OF NEW YORK
TANYA ELAINE ROGERS, OF TEXAS
SUSAN ROSS, OF NEW YORK
ZACHARY R.S. ROTHSCHILD, OF THE DISTRICT OF COLUMBIA
LAUREN C. SANTA, OF THE DISTRICT OF COLUMBIA
TODD BENSON SARGENT, OF VERMONT
MONICA A. SLEDJESKI, OF NEW YORK
MATTHEW BOUTON STANNARD, OF CALIFORNIA
MATTHEW M. STEED, OF CALIFORNIA
DAVID S. STIER, OF NEW YORK
ANNA STINCHCOMB, OF THE DISTRICT OF COLUMBIA
CASSIE COADY SULLIVAN, OF NEW YORK
VIOLETA TALANDIS, OF MARYLAND
DANIEL J. TARAPACKI, OF NEW YORK
TIMOTHY TRANCHILLA, OF THE DISTRICT OF COLUMBIA
GREGORY J. VENTRESCA, OF NEW YORK
DOMINGO J. VILLARONGA, OF NEW YORK
NICHOLAS VON MERTENS, OF NEW HAMPSHIRE
DARREN WANG, OF CALIFORNIA
THOMAS CHARLES WEBER, OF TEXAS
JOHN NOEL WINSTEAD, OF WYOMING
WILLIAM QIAN YU, OF WASHINGTON

### IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

NOEMI ALGARINLOZANO
CAROL ANN BARCLA ANDREWS
SUSAN F. BALL
SUSAN E. BASSETT
YOLANDA D. BLEDSOE
KEVIN J. BOHAN
KAREN L. CHURCH
STEPHEN K. DONALDSON
CAROLE A. FARLEY
ANNETTE S. GABLEHOUSE
VIRGINIA A. GARNER
DANIEL E. GERKE
PENELOPE F. GORSUCH
VIVIAN C. HARRIS
MADELINE D. HOWELL
AMELIA L. HUTCHINS
BILLYE G. HUTCHISON
DENISE R. IRIZARRY
ALETA P. JEFFERSON
GUYLENE D. KRIEGHFLEMING
DEBORAH R. MARCUS
ELEANOR C. NAZARSMITH
DEAN L. PRENTICE
JAMES E. REINEKE
THERESA D. RODRIGUEZ
LISA A. SCHMIDT
ROBIN L. SCHULTZE
KAREN L. SCLAFANI
JULIA G. STOSHAK
CHRISTINE S. TAYLOR
MARY M. WHITEHEAD
PATRICK J. WILLIAMS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

DAVID W. BOBB
CHARLES R. CARLTON, JR.
CRAIG J. CHRISTENSON
DAVID COHEN
JAMES H. DIENST
BRIDGET C. GREGORY
SAMUEL D. HALL III
ALVIS W. HEADEN III
STEVEN R. HINTEN
DOUGLAS C. HODGE
BAILEY H. MAPP
DANIEL E. REISER
LONDON S. RICHARD
ERIC A. SHALITA
MARK E. SMALLWOOD
BRIAN K. STANTON
JAY M. STONE
ROBERT W. WISHTISCHIN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

RANDALL M. ASHMORE
ADAM G. BEARDEN
SCOTT T. BROWN
MICHAEL S. BURKE
HEATHER M. CARTER
ROBERT R. EDWARDS, JR.
KURTIS W. FAUBION
D. SCOTT GUERMONPREZ
JASON T. HALL
SCOTT J. HILMES
THOMAS M. HUNTER
JEFFERY F. JONES
ELMO J. ROBISON III
R. BRUCE ROEHM
HERBERT C. SCOTT
JAMES A. SPERL

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

SEAN W. DIGMAN
LARRY J. EVANS
TOMMY D. FISHER
MICHAEL E. FULTON
ALLEN J. HEBERT, JR.
GERALD P. KABAN
ANGELA M. MONTELLANO
JACOB E. PALMA
HYEKYUNG HELENA PAE PARK
PHILLIP C. PORTERA
ROGER E. PRADELLI
ROBERT V. REINHART, JR.
DAVID L. ROBINSON

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be colonel*

ALBERT H. BONNEMA
MARK J. BROOKS
MARY T. BRUEGGEMEYER
JAMES H. BURDEN, JR.
BRET D. BURTON
THOMAS N. CHEATHAM
NICOLA A. CHOATE
BRANDON D. CLINT
CHARLES D. CLINTON
MARK R. COAKWELL
MARCUS M. CRANSTON
BRIAN K. CROWNOVER
ERIC W. FESTER
DAVID GARRETT, JR.
PHILIP L. GOULD
PAUL E. GOURLEY
NABIL M. HABIB
BENJAMIN A. HARRIS
KAREN A. HEUPEL
JAMES L. JABLONSKI II
WILMER T. JONES III
JAMES A. KEENEY
MICHAEL R. KOTELES
JOHN P. LYNCH
DEBRA L. MALONE
RANDY O. MAUFFRAY
RANDALL R. MCCAFFERTY
KENT D. MCDONALD
WILLIAM F. MOORE
PAUL H. NELSON
MARRINER V. OLDHAM
TIMOTHY R. PAULDING
GARY A. PEITZMEIER
TODD W. POINDEXTER

MICHAEL G. RAPPA
TODD E. RASMUSSEN
ROCKY R. RESTON
JOANN Y. RICHARDSON
EDGAR RODRIGUEZ
LOWELL G. SENSINTAFFAR
STACY A. SHACKELFORD
TERESA M. SKOJAC
LEIGH A. SWANSON
MICHAEL S. TANKERSLEY
GRANT P. TIBBETTS
DEREK K. URBAN
SCOTT A. VANDEHOEF
BRYAN M. VYVERBERG
GEORGE A. WADDELL
LESLIE A. WILSON
RAWSON L. WOOD
JON B. WOODS
SCOTT D. ZALESKI
GIANNA R. ZEH

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

ERIC R. BAUGH, JR.
DORON BRESLER
STEPHEN H. CHARTIER
JILL A. CHERRY
ORLANDO L. COLONCONCEPCION
FREDERICK A. CONNER
GREGORY A. CONNER
MARVIN CONRAD
JONATHAN D. EVANS
DANIEL B. GABRIEL
MICHAEL T. GARDNER
CECILIA I. GARIN
DAVID E. HALL
DENNIS M. HOLT
DAVID M. JONES
MIKELLE L. KERNIG
JAMES DALE KISER, JR.
KELLI C. MACK
ROBERT K. MCGHEE
KATHERINE R. MORGANTI
BARRY F. MORRIS
JESSE MURILLO
JEANLUC G. C. NIEL
KYLE W. ODOM
INAAM A. A. PEDALINO
KYLE E. PELKEY
AIDA M. SOLIVANORTIZ
YOUNG K. SUNG
JOHN A. THOMAS
JAMES R. THOMPSON
WILLIAM K. TUCKER
GEORGE S. TUNDER, JR.
KARYN E. YOUNG

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

ADAM M. ANDERSON
BRETT C. ANDERSON
ROBERT S. ANDREWS
DAVID E. ANDRUS
MARIA M. ANGLES
MARY CATHERINE ARANDA
JORGE ARZOLA
SHAWN M. BAKER
KIMBERLY M. BALOGH
ANTHONY S. BANKES
JEFFREY W. BARR
PETRAN J. BEARD
RICHARD W. BENTLEY
JEFFREY J. BIDINGER
JAMES A. BLEDSOE
DENNIS F. BOND II
CRAIG D. BOREMAN
STACEY L. BRANCH
BRETT D. BRIMHALL
SCOT E. CAMPBELL
FRANCIS R. CARANDANG
GABRIELLA CARDOZAFAVARATO
DAVID H. CARNAHAN
BRYCHAN K. CLARK
DAREN S. DANIELSON
PAUL BARTOLOMEO DIDOMENICO
GEORGE M. DOCKENDORF
JAMISON W. ELDER
ANN S. FENTON
COLLEE FITZPATRICKWEISBROD
JAY T. FLOTTMANN
SARAH O. FORTUNA
CURTIS M. FOY
DOUGLAS S. FRENIA
KELLY D. GAGE
JOSEPH P. GALLAGHER
MICHAEL S. GARRETT
VERONICA M. GONZALEZ
THERESA B. GOODMAN
WADE T. GORDON
NOAH H. GREENE
LOUIS Q. GUILLERMO
ERIC S. HALSEY
DERRICK A. HAMAOKA
MATTHEW P. HANSON
KARIN N. HAWKINS
BRET D. HEEREMA
ERIC J. HICK
JAMES M. HITCHCOCK
CRYSTAL L. HNATKO
KYLE B. HUDSON
SCOTT W. HUGHES
TODD P. HUHN
JON R. JACOBSON
JOEL W. JENNE
DAVID S. JONES
LOREN M. JONES
THOMAS E. KIBELSTIS
PAUL KLIMO, JR.
MICHELE L. KNIERIM
JANA S. KOKKONEN
JAMES B. KOPP
ELLA B. KUNDU
NIRVANA KUNDU
ALEX J. LEE
JEFFREY D. LEWIS
KARYN C. LEWIS
KEEGAN M. LYONS
DANIEL S. MADSEN
CHARLES G. MAHAKIAN
MARIA I. MARTINO
PHILLIP E. MASON
DEREK A. MATHIS
EDWARD L. MAZUCHOWSKI II
HOWARD J. MCGOWAN
DONALD J. MCKEEL
MICHAEL D. MICHENER
QUINTESSA MILLER
BRIAN A. MOORE
PAUL M. MORTON
SAMUEL B. MUNRO
DANIEL H. MURRAY
HAFEZ A. NASR
BRETT R. NISHIKAWA
WILLIAM C. OTTO
SARAH M. PAGE
WESLEY D. PALMER
GILBERTO PATINO
JUDITH E. PECK
ALYSSA C. PERROY
TIMOTHY M. PHILLIPS
BRIAN J. PICKARD
ROBERT R. PORCHIA
TONYA S. RANS
NATALIE L. RESTIVO
MARK G. RIEKER
ERIC M. RITTER
JENNIFER M. RIZZOLI
MARK O. ROBINSON
KYLE M. ROCKERS
GEOFFREY T. SASAKI
STEPHANIE A. SAVAGE
CHRIS A. SCHEINER
STEPHEN E. SCRANTON
JIFFY C. SETO
ANDREA D. SHIELDS
DANIEL A. SHOEMAKER
REBECCA W. SHORT
TERESA A. SIMPSON
ROMMEL B. SINGH
JOHN HWA SLADKY
KEVIN E. STEEL
ELIZABETH DOKFA P. STEWART
MARK A. SUMMERS
DEENA E. SUTTER
LON J. TAFF
PATRICK J. THOMPSON
RAMONE A. TOLIVER
MARK S. TOPOLSKI
EDDIE H. UY
JOSEPH D. VILLACIS
KIRSTEN R. VITRIKAS
DANIEL R. WALKER
DAVID T. WANG
YUANHONG WANG
JOHN C. WHEELER
PATRICK F. WHITNEY
MAUREEN N. WILLIAMS
LEE T. WOLFE
GRAND F. WONG
ROGER A. WOOD
HENRY ALLEN WOODS, JR.
JOSHUA L. WRIGHT
JOY C. WU
SHAHID A. ZAIDI

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

BRIAN J. ALENT
AYMAN M. ALI
ZACHARY D. ALLMAND
ELIZABETH A. BOWMAN
JEFFREY R. BURROUGHS
JAN R. CARLSON
BENJAMIN T. CLARK
JEFFREY E. CULL
SHONNA R. CURRY
JESSICA N. DEAN
DAVID M. DENNISON
JENNIFER M. DEPEW
RYAN M. DIEPENBROCK
MATTHEW J. EDWARDS
JEFFREY D. FLEIGEL III
DANIEL D. FRIDMAN
BENJAMIN J. GANTT
LANNY J. GIESLER
PHILLIP J. HARVEY
CYNTHIA HERNANDEZFALU
SHAWNA N. HOFFERT
LAQUANIS S. HOOKER
LAWERENCE S. HORNE
HANLING H. JOSWICK
NEIL C. KESSEL
JONGSUNG KIM
JERED B. KING
KRISTEN B. KNODEL
AARON T. KRANCE
JAE S. LEE
LOUIS JOSEPH MARCONYAK, JR.
AMY G. MASON
SHAWN P. MCMAHON
BRENT A. MILNE
TAMARA A. MURRAY
LOSCAR N. PEREZVELEZ
COURTNEY A. SCHAPIRA
NICHOLAS D. SCHULTE
NATHAN T. SCHWAMBURGER
JELENA C. SEIBOLD
LORA R. SKEAHAN
DRAGOS STEFANDOGAR
JAMES R. VANDRE
LANCE R. WASHBURN
DENNIS J. WEBER II
RACHEL A. WEBER

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ERIC E. ABBOTT
ERIK L. ABRAMES
VAN W. ADAMSON
JASON M. ALLEN
MICHAEL A. AROCHO
ANGELE J. ARTHUR
JOSEPH R. BABER
MICAH J. BAHR
CARRIE G. BAKER
ERIK A. BAKER
TROY W. BAKER
KEVIN J. BALDOVICH
JEREMY W. BALDWIN
JAMES R. BALES
RYAN A. BARENCHI
ROBERT T. BARIL
CHRISTOPHER W. BATES
GAIL C. BATES
CLAIRALYN L. BAUCOM
TIMOTHY S. BAUMGARTNER
ELIZABETH A. BEAL
AMY S. BECK
SCOTT J. BENTLEY
WILLIAM A. BETHEA
CHARLES A. BEVAN III
DAVID K. BIGELOW
BRANDON J. BINGHAM
CHRISTOPHER D. BLACK
KWABENA L. BLANKSON
CALE WALTER BONDS
KEVIN S. BORCHARD
ERNEST E. BRAXTON
HEATHER K. BRIGHT
PAMELA J. BRODERICK
AMY N. BROWN
DANIEL J. BROWN
MICHAEL J. BUYS
SUSAN J. CARBOGNIN
MICHAEL H. CARPENTER
KATRINA CARTER
DAVID J. CASSAT
ELISE M. CHAMBERS
NATALIE G. CHAN
MICHAEL J. CLEGG
NATHAN F. CLEMENT
TIMOTHY J. COKER
JASON A. COMPTON
TARA L. CONNER
JAMES R. COONEY
GEOFFREY J. COOPER
SUSANNAH C. COOPER
CHRISTINA L. CRISTALDI
SPENCER J. CURTIS
AUGUSTA L. CZYSZ
DANIEL F. DAVENPORT
AMY M. DAVIS
JESSICA M. DAVIS
RICHARD P. DAVIS
JONATHAN A. DAY
AUTUMN N. DEAN
MELISSA J. DOOLEY
BRANDEN G. DUFFEY
SPENCER G. DUNCAN
STEPHEN T. ELLIOTT
JONATHAN E. ELLIS
JOEL B. ELTERMAN
MICHELLE M. ENGELKEN
JOSEPH K. ERBE
WILLIAM R. ERRICO
DONALD S. EULER, JR.
ROGER N. EWONKEM
TIMOTHY D. FAGEN
SHANNON D. FARAG
DAVID D. FARNSWORTH
MELINDA G. FIERROS
COREY D. FINCH
AUSTIN D. FINDLEY
CARRIE E. FLANAGAN
STACY F. FLETCHER
FREDERICK L. FLYNT, JR.
CRISTINA L. FRANCHETTI
RYAN D. FREELAND
SHAWN K. FRENCH
SCOTT H. FRYE
DANIEL L. GALLO
JOHN G. GANCAYCO
RYAN F. GIBBONS
GUY N. GIBSON
SHAUN M. GIFFORD
PHILLIP J. GOEBEL
MICHELLE NICOLE GONZALEZ
JASON C. GOODWIN
ZACHARY P. GORAL

JOSE B. GOROSPE
MARIA E. GOROSPE
ERIC S. GRAJKOWSKI
GIOVI GRASSOKNIGHT
BRIAN J. GROAT
FREDERICK P. GROIS III
AJIT GUBBI
MICHELLE S. GUCHEREAU
MICHAEL S. HAMPTON
TRISTAN E. HANDLER
BRENT S. HARLAN
CORTNEY ELIZABETH HARPER
JEFFREY N. HARRIS
NOAL I. HART
WILLIAM A. HAYES II
KEVIN F. HEACOCK
SARAH M. HEDRICK
JASON A. HIGEY
JASON H. HINES
THAO T. B. HO
DIANE C. HOMEYER
JACOB G. HOOVER
WILLIAM R. HOWARTH
JUSTIN C. HUANG
ISAAC P. HUMPHREY
KYLE F. JARNAGIN
TAUNYA M. JASPER
KEVIN N. JENSEN
JULIE C. JERABEK
ASHLEY B. JOHNSON
COLLEEN N. JOHNSON
SARA KAY LUTTIO JOHNSTONE
FRANCES J. JONES
LASONYA D. JONES
OSCAR B. JONES
ROBERT J. JONES, JR.
KEVIN KALWERISKY
ALEXANDER P. KELLER IV
JARED C. KELSTROM
TIMOTHY P. KENNARD
KEIRON T. KENNEDY
SARA S. KERLEY
JONATHAN R. KEVAN
JEREMY P. KILBURN
DANNY S. KIM
JEFFREY D. KISER
DAVID A. KLEIN
ELIZABETH A. KLEWENO
SHANNON F. KLUMP
JOSHUA H. KNOWLES
JAMES B. KOCH
KATHERINE A. KOCZAN
CALEB E. KROLL
THOMAS J. KRYZAK
BRIAN D. LARSON
JOSHUA L. LATHAM
ZHI V. LAU
RANDY A. LEACH
CHRISTOPHER C. LEDFORD
RYAN S. LEE
JADE A. LHEUREUX
JOHN LICHTENBERGER III
APRIL LIGATO
PEICHUN LIN
SCOTT R. LINK
NANCY W. LO
GUSTAVO A. LOPES
WILLIAM N. LUTHIN
DUSTIN O. LYBECK
MEIKEL P. MAJOR
LOU ROSE M. MALAMUG
JELRIZA C. B. MANSOURI
DAVID J. MARTINEZ
AMELITA A. MASLACH
JOEL G. MASSEY
JAMIE A. MASSIE
RENEE I. MATOS
MICHAEL J. MATSUURA
MICHAEL J. MATTEUCCI
JEFFREY C. MCCLEAN
MARC D. MCCLEARY
RISPBA N. MCCRAYGARRISON
TORREE M. MCGOWAN
RYAN S. MCHUGH
CHRISTOPHER C. MEDINA
WAYNE J. MERBACK
BRADLEY R. MEYER
LISA R. MICHELS
CHARLES B. MILLER
SHANNA M. MOLINA
JEREMY D. MOLL
TYLAN A. MUNCY
BRIAN H. NEESE
COURTNEY R. NELSON
SHERWIN P. NEPOMUCENO
KHANG H. NGUYEN
JOSEPH D. NOVAK
VALERIE C. OBRIEN
KEVIN L. OLSON
ROBERT M. ORE
KATHRYN R. OUBRE
JEREMY W. OWENS
CHI NA PAK
BRET L. PALMER
BRUCE M. PALMER
BENJAMIN J. PARK
ROGER T. PARK
JASON D. PASLEY
JOSHUA B. PEAD
CANDACE S. PERCIVAL
SERAFIM PERDIKIS
SARA LYNN PETERSONSCHRADER
ANDREW J. PETERSON
KRISTINE K. PIERCE
DARREN S. PITTARD
BRANDON W. PROPPER
JAMIE M. RAND
PHILLIP J. REDD
ANDREW G. REES
SUSAN L. REESE
CHRISTOPHER A. REGNIER
STEVEN REGWAN
AMANDA B. RICHARDS
TIGHE C. RICHARDSON
JONATHAN M. RICKER
JILL E. ROTH
JUSTIN P. ROWBERRY
JAIME RUIZ PEREZ
PETER R. SABATINI
DERICK A. SAGER
STEPHEN C. SAMPLE
RICHARD J. SAXEN
RANDAL S. SCHOLMA
KARA S. SCHULTZ
ROSS A. SCHUMER
REBEKAH A. SENSENIG
TRISTAN L. SEVDY
JONATHAN B. SHAPIRO
CHARLOTTE A. SHEALY
MEHDI C. SHELHAMER
MARK E. SHEPHERD
GREGORY A. SKOCHKO
CLARISA I. SMITH
TRIMBLE L. SPITZER
TRAVIS A. STEPHENSEN
HEATHER L. STEWART
NORMAN E. STONE III
STEPHEN T. D. STOREY
LISA E. STRICKLAND
SARAH J. STRINGER
JAMIE M. SWARTZ
ROBERT C. SWIFT
RAMON N. THOMAS
ROGER S. THOMAS
GINA M. THOMASON
KATHERINE S. TILLE
PAUL A. TILTON
JAMES R. TOWNLEY
PETER T. TRAN
TIM P. TRAN
RONALD J. URTON
ANDREW R. W. VACLAVIK
FLORA P. VARGHESE
DOUGLAS R. VILLARD
ADAM P. VOSSEN
TERENCE E. WADE
DENNIS D. WALKER
ANDREW L. WALLS
YANG WANG
JEREMIAH R. WATKINS
LARISSA F. WEIR
CHRISTINA M. WELCH
DALIA J. WENCKUS
JENNIFER L. WHATLEY
BRAD E. WHEELER
CALEN N. WHERRY
BENJAMEN H. WILLIAMS
PHILIP A. WIXOM
EMILY B. WONG
AARON F. WOODWARD
JEFFREY S. WOOLFORD
BRIAN W. WRITER
DUOJIA XU
ETHAN EVERETT ZIMMERMAN

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY JUDGE ADVOCATE GENERAL'S CORPS UNDER TITLE 10, U.S.C., SECTIONS 624 AND 3064:

*To be lieutenant colonel*

OLGA M. ANDERSON
DAVID O. ANGLIN
JASON M. BELL
ROSEANNE M. BENNETT
DEIRDRE G. BROU
MARY E. CARD
JONATHAN E. CHENEY
HEATHER J. FAGAN
DANIEL M. FROEHLICH
DEON M. GREEN
JOHN A. HAMNER II
JAMES G. HARWOOD
TIMOTHY P. HAYES, JR.
KEVEN J. KERCHER
MAUREEN A. KOHN
RODNEY R. LEMAY
ERIC D. MAGNELL
ROBERT L. MANLEY III
ANDRAS M. MARTON
SEAN T. MCGARRY
OREN H. MCKNELLY
MICHAEL D. MIERAU, JR.
RUSSELL N. PARSON
KELLI L. PETERSEN
EMILY C. SCHIFFER
THOMAS E. SCHIFFER
CHRISTINE M. SCHVERAK
DAVID T. SCOTT
KARIN G. TACKABERRY
NELSON J. VANECK
AARON A. WAGNER
CHARLES W. WALLACE
SCOTT D. WALTERS
MARTIN N. WHITE
ERIC W. YOUNG
D004179

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 6222:

*To be major*

BRIAN J. DIX

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. DIXIE A. MORROW

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COL. PAUL S. DWAN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

*To be brigadier general*

COL. DANIEL B. FINCHER
COL. DAVID C. WESLEY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

*To be brigadier general*

COLONEL GARY C. BLASZKIEWICZ
COLONEL ARTHUR C. HAUBOLD
COLONEL MICHAEL D. KIM
COLONEL LINDA S. MARCHIONE
COLONEL RICHARD O. MIDDLETON II
COLONEL ROBERT N. POLUMBO
COLONEL JANE C. ROHR
COLONEL PATRICIA A. ROSE
COLONEL PETER SEFCIK, JR.
COLONEL JAMES F. SMITH
COLONEL EDMUND D. WALKER
COLONEL WILLIAM O. WELCH

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be vice admiral*

VICE ADM. DAVID ARCHITZEL

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 5046:

*To be major general*

COL. VAUGHN A. ARY

# EXTENSIONS OF REMARKS

## A TRIBUTE TO CAMPBELLSVILLE UNIVERSITY WOMEN'S VOLLEYBALL TEAM

### HON. BRETT GUTHRIE

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GUTHRIE. Madam Speaker, I rise today to honor the Campbellsville University Women's Volleyball Team for their outstanding performance this season. While the team's record-setting 38 wins constitute a monumental achievement in their own right, the fact that the Campbellsville University Volley Tigers won the team's—and the university's—first NCCAA National Championship is truly a testament to their exceptional effort and indomitable spirit.

The Lady Tigers' extraordinary commitment to academic and athletic excellence has not only distinguished them as role-models for their community, but has also earned Campbellsville University the national attention it so richly deserves. It is fitting, then, that the Volley Tigers' tremendous success aptly demonstrates not only their own exacting standards of excellence, but those of the university itself.

In addition to Coach Randy LeBleu and Assisitant Coach Amy Eckenfels, I would like to commend the members of the team, Caitlin Dresing, Brooke Marcum, Lilian DaSilva, Tiarra Wilham, Lilian Odek, Caroline Martin, Samantha James, Shannon Cahill, Christiana Sindehar, and seniors Jovana Koprivicia, Whitney Haynes and Renee Netherton, on their outstanding success. I wish them nothing but the best in their future endeavors.

## HONORING SERGEANT BENTON THAMES FOR HIS EXEMPLARY SERVICE TO THE UNITED STATES OF AMERICA AS COMMANDER OF THE RELIEF AT THE TOMB OF THE UNKNOWN SOLDIER AT ARLINGTON NATIONAL CEMETERY

### HON. BILL CASSIDY

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CASSIDY. Madam Speaker, I rise today in honor of Sergeant Benton Thames from the Town of Springfield in Louisiana's Sixth's Congressional District. It gives me great pleasure to extend to Sergeant Thames immense gratitude and appreciation for his exemplary service to our country as Commander of the Relief at the Tomb of the Unknown Soldier at Arlington National Cemetery.

Sergeant Thames has dutifully guarded the Tomb of the Unknown Soldier for over two years. His responsibilities include changing of the guard and laying of the wreath at the Tomb. Sergeant Thames strives to make this ceremony special for the thousands of veterans and Americans who visit this sacred landmark annually. Sergeant Thames' dedicated service and commitment to our brave and courageous veterans and fallen heroes is truly admirable.

Sergeant Thames is a graduate of Springfield High School, and a former resident of Louisiana's Sixth Congressional District. In his spare time, Sergeant Thames volunteers with the Louisiana Honor Air program which aides World War II veterans in a variety of ways. I am honored by Sergeant Thames' service to our country and wish him continued success as Commander of the Relief at the Tomb of the Unknown Soldier.

## IN HONOR AND RECOGNITION OF DR. WILLIAM HENRY ''BILL'' COSBY JR.

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Dr. William Henry ''Bill'' Cosby Jr.—a husband, a father, a renowned entertainer, and an activist who has recently been selected to receive the Kennedy Center's 12th Annual Mark Twain Prize for American Humor. His contributions as an author, writer, actor, singer, comedian, and television producer span every facet of the entertainment industry and his work is beloved around the world.

In 1961, Mr. Cosby was the first African American to win the coveted Emmy award for his work on the TV show, ''I Spy.'' Since then, Mr. Cosby has garnered numerous awards for excellence in the performing arts including the Golden Globe, a People's Choice award, and Grammy and Emmy awards. His natural comedic talent was first noticed in college when he attended Temple University and worked as a bartender. His quick wit and laid-back style easily drew others to him, including the legendary producer and director Carl Reiner. During his successful career in entertainment, Mr. Cosby remained committed to education, eventually earning a doctorate degree in Education from the University of Massachusetts at Amherst.

Mr. Cosby is a rare comedic genius. He is intelligent, creative and never relies on profanity. His popular stand-up comedy performances are drawn from personal experiences such as a childhood spent on the streets of Philadelphia and his experiences as husband and a father. His thought provoking performances feature themes of family, love and human fallibilities. In addition to stand-up, his work in television is well known. He worked on hits including the ''Electric Company,'' the animated comedy ''Fat Albert and The Cosby Kids'' and starred as Dr. Heathcliff Huxtable, the affable, educated and loving father on the hit comedy ''The Cosby Show.'' Mr. Cosby's work explored challenging family issues softened by comedy. His impact on children and young adults is immeasurable. Even today, Dr. Huxtable continues to be the most beloved television father of all time. Moreover, Mr. Cosby continues to be a mentor and voice of empowerment in urban and black communities. He uplifts and inspires young and old through public forums, music, humor and song. He continues to educate and encourage involvement based on the principles of family unity, community involvement and personal responsibility.

Madam Speaker, please join me in honor and recognition of Dr. William Henry ''Bill'' Cosby. Mr. Cosby's brilliant artistry, unwavering activism and volunteer spirit continue to lighten hearts and enlighten minds by bringing hope and laughter to millions. Mr. Cosby has made and continues to make our nation and our world a better place.

## PERMANENT ESTATE TAX RELIEF FOR FAMILIES, FARMERS, AND SMALL BUSINESSES ACT OF 2009

SPEECH OF

### HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, December 3, 2009*

Mr. BECERRA. Mr. Speaker, I rise in opposition to H.R. 4154, a bill that would cut taxes for millionaires at a time when Americans are struggling to hold on to their paychecks, their homes, and their dignity.

Today, one in ten Americans is out of work, one in eight Americans is receiving food assistance, and one in six of our children is living in poverty. With such need in this nation, Congress's primary mission must be to create jobs and strengthen economic security for the American people. When Congress convened in January, the economy was losing 20,000 jobs each day, and we took decisive action to avert the freefall of the economy and to set it on the path to recovery. The American Recovery and Reinvestment Act made critical investments in our communities, infrastructure, education, and clean energy, and has so far created or saved as many as 1.6 million jobs.

As a result of this decisive action by Congress, the most recent Department of Labor jobs report showed that this country lost 587,000 fewer jobs in November 2009 than January 2009. While a significant improvement over the numbers at the beginning of this year, it is clear that this recession is still exacting a devastating toll. Congress must keep its focus on creating jobs. Legislation is urgently needed to provide assistance to prepare workers to fill occupations like nursing which have a shortage of skilled workers, to invest in new job-creating technologies, and to encourage the next generation of entrepreneurs to produce the new ventures and products that will ensure that the American economy returns to its preeminent position in the world.

This legislation does not help the millions of Americans in need nor does it set the right priorities for this country. In such dire economic times with the largest budget deficit in this nation's history, this Congress does not have the luxury of bestowing this tax cut of a quarter-trillion dollars on millionaires.

I urge my colleagues to vote against this bill that helps only millionaires, and to turn their focus towards the problems of those Americans who are in economic crisis or could shortly be confronted with painful financial decisions if this economy does not start improving its employment outlook.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. PATRICK J. KENNEDY

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. KENNEDY. Madam Chair, last fall, after 8 years of the previous administration looking the other way while Wall Street and the big banks exploited loopholes, we faced a near collapse of our financial system. Deregulation and lax oversight allowed Wall Street and big banks to gamble with the hard-earned money of the American people, compromising our savings and risking our future. Over the last year, Congress has had to make difficult, and frankly unpopular, decisions that were necessary to rescue our economy from the brink of disaster.

The Wall Street Reform and Consumer Protection Act will put in place the rules to make sure that this doesn't happen again, to protect the middle-class Americans who play by the rules from the consequences of Wall Street greed. This legislation ends many of the unfair lending practices that created predatory mortgages and waves of foreclosure. By stopping "too big to fail" firms before they threaten to wreak havoc on our economy, H.R. 4173 will finally put an end to the era of taxpayer-funded bailouts.

While many aspects of this legislation are important, perhaps its most significant achievement is the establishment of an agency whose primary mission is to ensure the safety of financial products and look out for consumers. For too long, all of our fractured regulatory agencies have only looked out for the financial institutions they work for. The Consumer Financial Protection Agency will look out for unsafe financial products the same way the FDA monitors unsafe medicines or the Consumer Product Safety Commission examines our children's toys.

While we have taken extraordinary actions to correct our economic crisis, the Wall Street Reform and Consumer Protection act takes the necessary actions to hold accountable the people responsible for last year's crisis and to prevent another crisis in the future.

## TRIBUTE TO DR. DENNIS SANDLIN

### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to the late Doctor Dennis Sandlin, a Kentucky physician who lost his life, standing fast in the face of danger to practice ethical and responsible medicine in a medically underserved region, inundated with poverty and drug addiction.

On December 8, 2009, Doctor Sandlin was tragically murdered in front of nurses and staff at the Leatherwood-Blackey Medical Clinic in Perry County, Kentucky. Doctor Sandlin routinely refused to give doctor-shopping drug seekers a prescription for pain pills without passing proper evaluation. He refused to allow his practice to be part of the drug epidemic, although many physicians in the past have given in to fear of demands and threats by drug seekers across the region. After being denied narcotics for a second time that morning, a patient returned to Doctor Sandlin's office and fatally shot him in the head.

Doctor Sandlin returned home to Perry County, after graduating from the University of Louisville's School of Medicine, to provide healthcare to less fortunate individuals. He served generations of families for 28 years until his untimely death. Doctor Sandlin's medical practice may be over, but his style of practice will live on as the pinnacle of good medicine.

Madam Speaker, I ask my colleagues to join me in memory of Doctor Dennis Sandlin. In my opinion, he died a hero. Every physician, pharmacist, law enforcement official, medical and pharmacy student can learn from Doctor Sandlin's tenacity to practice responsible medicine and never give place to fear.

## PERSONAL EXPLANATION

### HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. GRANGER. Madam Speaker, on rollcall Nos. 939, 940, 942, 943, and 945 I was absent from the House.

Had I been present, I would have voted "no."

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. BUYER. Madam Chair, I rise in strong opposition to H.R. 4173 because it does not exempt the VA's very successful Loan Guaranty program from regulation under the provisions of this bill. The saying, "if it ain't broke, don't fix it," applies. The VA guaranteed loans are not experiencing the high rates of delinquency and foreclosure like those backed by FHA. VA, to its credit, recognized the risks inherent in easing underwriting standards and stayed out of the subprime market.

According to the September 30, 2009 National Delinquency Survey conducted by Mortgage Bankers Association, VA-backed home mortgages are experiencing significantly lower delinquency and foreclosure rates than any other government-backed programs. For example, as of September 30, the delinquency rate for all subprime mortgages was over 28 percent. FHA-backed loans show about a 14.4 percent delinquency rate while only about 8.1 percent of VA loans were delinquent. More ominously, 24.7 percent of subprime loans were in foreclosure (VA quite wisely does not guarantee subprime loans), and 3.3 percent of FHA loans had reached the foreclosure stage but only about 2.3 percent of VA loans were being foreclosed. These differences due to VA's stewardship and the Veterans Affairs Committee's oversight amount to tens of millions of dollars in savings to the taxpayers.

Madam Chair, the provisions of H.R. 4173 would clearly apply to the VA's Loan Guaranty program. For example, in defining the scope and functions covered by the bill, section 4002 excludes only the "Secretary of the Treasury and any agency or bureau under the jurisdiction of the Secretary." That means VA loan guaranty programs are subject to the provisions of the bill. Further in the definitions of "Financial Activity", it includes extending credit. VA has a small direct loan program used to sell their foreclosed properties. The bill's definitions also cover collecting consumer data. VA does that. VA also sells mortgage-based securities on the secondary market. Such activities are covered in the definitions section. The definitions also cover VA's contracts for portfolio servicing, including sales and maintenance of its foreclosed properties. Finally, VA-guaranteed loans offered by lenders would be subject to the jurisdiction of the CPRA rules and regulations.

There are a couple of reasons why VA's loan guaranty program is outperforming the non-VA sector. First, the House Veterans Affairs Committee has oversight of the program and works hard to ensure the program is conducted in a manner that does not stray into products like subprime loans. Second, VA did not reduce its underwriting standards, and the combination of its higher standards along with servicing programs to assist veterans experiencing difficulty, has allowed VA to be a good steward of taxpayer dollars.

My understanding of this mammoth 1,300 page bill is that the new bureaucracies and czars and whatever else is hidden in the bill will have the ability to affect how the VA loan guaranty programs are offered. Additionally, the broad language in the bill which allows the CFPA the discretion to define its own powers is at best short-sighted and at worst Orwellian. I am reminded that absolute power corrupts absolutely. Moreover, by placing additional tax burdens on financial institutions, many of which invest in mortgage securities offered on the secondary market, mortgage rates will go up. That is exactly what the VA's Loan Guaranty program, or the housing market at large,

does not need because the secondary market is a major source of new lending resources as well as a $200 million dollar revenue stream to the Treasury.

Madam Chair, I didn't think it was possible to concoct a bill that was even more opaque and unintelligible than the majority's healthcare bill. Well, I was wrong. The majority has succeeded in grand fashion to foist yet another financial disaster in-the-making on the American public, one designed not to ensure stability in the markets, but to make financial markets subject to political intrusion and manipulation. We have seen what political pressure to expand access to credit to those whose incomes would not normally have qualified them for a mortgage did to the housing market. Let's not make this same mistake with veterans. In summary, the VA loan guaranty program has been well-managed and does not need the regulation and supervision under H.R. 4173 would allow.

I urge all of my colleagues to oppose H.R. 4173 and I yield back.

## ALLEGHANY COUNTY RESIDENTS HONORED BY NORTH CAROLINA HISTORICAL SOCIETY FOR SESQUICENTENNIAL CELEBRATIONS—12–10–09

### HON. VIRGINIA FOXX

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. FOXX. Madam Speaker, I rise today to praise the citizens of Alleghany County for recently winning a number of awards from the North Carolina Historical Society for the promotion and production of the celebration of Alleghany's Sesquicentennial.

The Alleghany Historical Genealogical Society and a local business, Imaging Specialists, took home awards for a number of multimedia productions that were used to promote Alleghany's 150th anniversary.

Imaging Specialists also took home the coveted President's Award for the leading role the business took in designing and producing historical projects over the past year.

Local residents Ernest Joines, Janice Alexander, Avin Joines and Jane Furlow each received honors from the state historical society for work ranging from a compilation of local music to a quilt design depicting area scenery.

All told the state Historical Society handed out a dozen different awards to these groups and individuals for the excellence demonstrated in the promotion of Alleghany County's Sesquicentennial events earlier this year. These much-deserved awards were the product of long hours of hard work. I applaud each winner for their dedication to their community and for their vision to produce such a fine celebration of Alleghany County's history.

## IN HONOR AND RECOGNITION OF CHARLES BURKE

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KUCINICH. Madam Speaker, I rise today in honor and recognition of Charlie Burke upon the occasion of his retirement from Baldwin-Wallace College after nearly fifty years of dedicated teaching, service, and leadership.

Professor Burke taught his first course in American Government and Politics in 1961. Since coming to Baldwin-Wallace in 1970, he has continued to teach and develop the course. He also crafted over a dozen other courses that critically analyze domestic and international politics.

Through both his curricular and extracurricular leadership positions, Professor Burke was instrumental in making Baldwin-Wallace College an internationally-recognized, liberal-arts institution of higher learning. Equally importantly, Professor Burke demonstrated commitment to students. He connected with and mentored students in order to facilitate learning and leadership in informal ways.

Professor Burke is one of only two students from his high school class to attend college. He also enlisted in the army at age 17 and served in the demilitarized zone in Korea. With help from the GI Bill, Professor Burke studied at Boston University, the Massachusetts Institute of Technology, and the University of Massachusetts.

Madam Speaker and colleagues, please join me in honor and recognition of Charlie Burke, who has academically and personally helped better the lives of his students.

## TRIBUTE TO SERGEANT RICK LAMPE

### HON. TOM LATHAM

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LATHAM. Madam Speaker, I rise to recognize Sergeant Rick Lampe on the occasion of his retirement from the Iowa State Patrol.

For the last 35 years, Sgt. Lampe has served Iowa faithfully and honorably. He first served four years with the sheriff's office in Waverly, Iowa before serving 31 years with the Iowa State Patrol. In 1979, he began his career with the Iowa State Patrol in Ogden, Iowa, where he plans to enjoy his retirement. Six and a half years ago, Sgt. Lampe was promoted to sergeant. Since 1993, he has provided security for Senator CHUCK GRASSLEY's biannual Ambassador's Tour across Iowa. Sgt. Lampe and his wife, Julie, have raised two sons, Nate and Nick and are blessed with three grandchildren.

Times have certainly changed during Sgt. Lampe's time in the Iowa State Patrol, even in the past ten years. In 1999, Sgt. Lampe's six county district had 47 officers working the area. Today there are only 26 officers working the same area. When he began, patrol officers did not spend significant time in training, but now nearly half of a patrol officer's time is training. There also have been many technological advances such as in-car computers that have helped simplify parts of the job throughout the years.

Sgt. Lampe's bravery and dedication in the Iowa State Patrol goes above and beyond what we are asked of as citizens of this country and has earned him the respect of his peers. I commend Sgt. Rick Lampe for his many years of loyalty and outstanding service in protecting Iowans and serving his community. It has been an immense honor to represent Sgt. Lampe in Congress, and I know that my colleagues in the United Stated Congress join me in wishing him all the best as he embarks on this new journey.

## RECOGNIZING MASTER SERGEANT ROGER COWART—SCOTTSDALE HEALTHCARE'S ''SALUTE TO MILITARY'' HONOREE

### HON. HARRY E. MITCHELL

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. MITCHELL. Madam Speaker, I rise today to recognize a member of the Armed Forces from my home state of Arizona. Each month, Scottsdale Healthcare honors servicemembers who perform diligent service to this country. For the month of December, they have recognized retired Master Sergeant Roger Cowart.

I commend Scottsdale Healthcare for paying tribute to such an outstanding servicemember for his bravery and service to our country.

Mr. Cowart served more than 25 years as a medic in the United States Air Force. He distinguished himself in the performance of outstanding service to the United States in numerous duties, culminating as Flight Chief, Pediatrics, 48th Medical Operations Squadron, 48th Medical Group, 48th Fighter Wing, and Royal Air Force Lakenheath, England.

As an Independent Duty Medical Technician, he provided medical care and practitioner mentoring in the most austere conditions. He is now a member of Scottsdale Healthcare's prestigious Military Training Partnership Team. As the technician for the high-tech simulation lab, he expertly uses his military and medical experience to create realistic trauma training scenarios. This training gives military medical personnel an excellent idea of what to expect when deployed to a war zone and ensures that the men and women who accept the call to duty receive the best care possible.

Madam Speaker, please join me in recognizing this Airman's outstanding contributions and for serving our country and protecting the lives of his fellow service men and women.

## SPECIAL AGENT SAMUEL HICKS FAMILIES OF FALLEN HEROES ACT

SPEECH OF

### HON. ANDER CRENSHAW

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 8, 2009*

Mr. CRENSHAW. Mr. Speaker, I rise in strong support of H.R. 2711, the FBI Families of Fallen Heroes Act. This legislation would ensure the families of our FBI Fallen Heroes are properly cared for and that the final remains of the fallen heroes are treated with the honor and respect they are due. The government would fully fund the transportation and relocation expenses of the immediate family members of FBI employees who have given their lives in the line of duty. This will allow the family members to relocate from their

spouse's last FBI assignment location to their hometown. In addition, the expenses of preparing and transporting the remains of the deceased to their final places of interment will be provided by the federal government.

For over a century the FBI's primary goal has been to protect and defend the United States against terrorist and foreign intelligence threats, to uphold and enforce the criminal laws of the United States, and to provide leadership and criminal justice services to federal, state, municipal, and international agencies and partners.

To accomplish these goals, the FBI has 56 field offices, 400 satellite offices, 62 international offices, and 14 legal attaché offices. With investigative programs including counterterrorism, cybercrime, civil rights, and organized crime, the FBI must continually update their techniques, strategies, and programs. FBI Special Agents and Professional Staff are rotated through these many offices to continue their training and to fill the FBI's staffing needs and investigative priorities.

Proof of their success is clearly shown in the 2006 indictment, arrest, and conviction of Fadl Mohamad Maatouk, a resident of Orange Park, Florida who was convicted of conspiracy to provide material support to Hezbollah. The FBI has also been instrumental in the investigations of the Oklahoma City bombing, multiple World Trade Center attacks, the assault on the USS Cole, and the attacks of 9/11.

These successes come at a price beyond the dangers in the field. FBI families, like military families, are under a great deal of stress. When a person chooses to serve in the FBI, every family member is affected. Every person experiences not just the benefits but also the downsides—the relocations, the long periods of separation, the not knowing if your spouse, dad or mom is in danger. Spouses and children must make new friends, enter new schools, find new employment, and try to adjust to new environs almost every three years. They do this while always knowing that their loved one, who has chosen to help defend the country, could be in the line of fire—maybe not today, but maybe tomorrow. It is a burden the family shoulders. I believe this legislation will in some small way lighten that load.

FBI agents and other employees make a choice to engage in a career that is vital to our national security. They understand that there are dangers, but still they make the choice to do their part to defend our country. My colleagues and I in the House unanimously agreed to this legislation because I believe we must honor those who have served and paid the ultimate price.

## PERSONAL EXPLANATION

### HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. KIND. Madam Speaker, I was unable to have my vote recorded on the House floor on Tuesday, December 8, 2009, due to inclement weather that kept me from flying back from Wisconsin in time for votes. Had I been present, I would have voted in favor of the Motion to Instruct Conferees on H.R. 3288 (Rollcall No. 931), H. Con. Res. 199 (Rollcall No. 932), H. Con. Res. 206 (Rollcall No. 933), H. Res. 940 (Rollcall No. 934), H. Res. 845 (Rollcall No. 935), H.R. 2278 (Rollcall No. 936), H. Res. 915 (Rollcall No. 937), and H. Res. 907 (Rollcall No. 938).

## A TRIBUTE TO SAN SAN LEE

### HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. TOWNS. Madam Speaker, I rise today in recognition of violinist San San Lee.

San San Lee was born in Taipei, Taiwan and raised in Michigan and Wisconsin since the age of one. Ms. Lee received a Bachelor of Music degree from the Oberlin College-Conservatory in Oberlin, Ohio and a Masters of Music degree from the Juilliard School on scholarships.

As a winner of the Oberlin Concerto competition, her performance of the entire Tchaikovsky Violin Concerto with the Oberlin Orchestra was broadcast on WOBC and classical station WCLV-Cleveland. Ms. Lee toured as a member of the Juilliard Orchestra in Japan, China and Hong Kong which included live radio and telelvision broadcasts. Her primary teachers included Margery Aber, Dorothy Mauney, Stephen Clapp and Joseph Fuchs. She also studied at Moscow's Tchaikovsky Conservatory with Sergei Kravchenko and Eduard Grach during their International Summer Festival and with Serban Lupu at the International Summer Festival in Todi, Italy.

As a winner of the Artists International Auditions, Ms. Lee performed her debut recital at Carnegie's Weill Recital Hall and was further invited to perform on their Alumni winners series. By invitation, she also performed a recital on the "Live from the Elvehem" series that was broadcast live on Wisconsin Public Radio in Madison, WI. Her numerous solo and chamber performances took place at Lincoln Center's Bruno Walter Auditorium, Merkin Hall, The American Landmark Festival, Harvard Club, The United Nations Auditorium, U-Penn, Texas Christian University, Louisiana State University, amongst others. Her solo & chamber performances span throughout the United States, Europe, Russia, and Eastern Europe. Ms. Lee has been invited as violin clinician teaching at Suzuki violin, chamber workshops and institutes nationwide. She teaches privately and has recently joined the violin faculty at the Riverdale Country School. Ms. Lee has been a member of the violin faculties at the School for Strings since 1990 and at Juilliard's Music Advancement Program since 1991, serving as their first departmental strings chair.

Madam Speaker, I urge my colleagues to join me in recognizing a renowned violinist, San San Lee.

## IN HONOR OF THE BRIDGEVILLE FIRE COMPANY

### HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CASTLE. Madam Speaker, it is with great pleasure that I rise today to pay tribute to the Bridgeville Fire Company for 100 years of outstanding service to the people of Delaware. The importance of emergency fire and medical services within our communities cannot be emphasized enough. I am proud to represent a state that is home to such selfless and dedicated firefighters, EMTs, and service volunteers as those of the Bridgeville Fire Company in Bridgeville, Delaware.

The Bridgeville Fire Company was born from a tradition of strong community involvement, and the Company has kept that tradition alive through the years. The fire department was organized on December 14, 1909 in the old Opera House. Ira Lewis, William E. Dimes, and Howard E. Hardesty were appointed to secure the necessary membership to incorporate what is known today as the Bridgeville Volunteer Fire Company, Inc. Over the next 12 months, plans were drawn and approved for the first building, at a cost of $1,100. Since then, the Bridgeville Fire Company has steadily grown into a pillar of strength within the community.

A century later, I would like to recognize and honor all the current and former members of the Bridgeville Fire Department for their service to our community, including: President Allen Parsons; Vice President Steve McCarron; Secretary John Tomeski, Sr; Treasurer Pete Stephens and Fire Recorder Malhon Baker. Their efforts inspire others and I am honored to highlight the positive influence that they have had throughout Delaware and beyond.

On this anniversary I would also like to once again commend the Bridgeville Fire Company for 100 years of exceptional service. The bravery and hard work of its members past and present and of its dedicated ladies auxiliary make Delaware a safer place to live, and I wish them all the best on this momentous occasion.

## HONORING BEECH HIGH SCHOOL BUCCANEERS ON WINNING THE 2009 TSSAA CLASS 5A STATE FOOTBALL CHAMPIONSHIP

### HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GORDON of Tennessee. Madam Speaker, I rise today to recognize the 2009 Beech High School Buccaneers for winning the TSSAA Class 5A State Football Championship.

I commend Beech High School Head Coach Anthony Crabtree and Assistant Coaches Jim Campbell, Darrell Keen, Patrick Duffer, Keith Powell, Kerry Jackson, Ryan Harris, Cody Brummett, and Principal Frank Cardwell.

These young men completed their season by defeating the Columbia Lions in a 47-33 win in the Blue Cross Bowl on Friday, December 4. The hard work and dedication this season brought the Buccaneers to the school's first state championship. Max Zinchini, Junior, was the defensive MVP with five tackles and two interceptions.

I congratulate each player of the 2009 5A State Champion Buccaneer Team: Dwayne Fleming, Daniel Richardson, Lincoln Kenitzer, Max Zinchini, Deshaun Tarkington, Taylor Peoples, Jarod Neal, Justin Cherry, Brock

Haley, Jay Huff, Conner Jett, Ponciano Cobb, Tony Newsom, Hunter Allison, Daniel Payne, Travis Haymer, Ethan Walker, Jason Brooks, Jonathan Sites, Dakota Deno, Hunter Stewart, Charles Metcalfe, Devonte Cobb, Clayton Ream, Malik Lewis, Jeffrey Hunter, Taylor Cash, Dante Paige, Alex Gomer, Dustin Bailey, Marquis Kingcade, Michael Santifer, Kyle Mortensen, Marquel Harold, Wesley Aiello, Camden Dalton, Jason Hunter, Brian Montgomery, Cody Winford, Justin Toro, Payton Schneider, Rob Hamilton, J.T. Barnes, Cole Nabors, Kyle Anderson, Zach Rumsey, Kevin Kline, John Stillman, Eric Buchanan, Jared Barfield, Christian Martinez, Ryan Turner, Jamey Howell, Jayden Maddox, Josh Knight, Alec Willett, Trey Barnfield, Trey Ralph, Drew Chaffee and Managers Austin Young, Chris Whited, and Lamont Sneed.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. PAUL RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. RYAN of Wisconsin. Madam Chair, H.R. 4173, The Wall Street Reform and Consumer Protection Act of 2009, presents a host of new financial rules and regulations and even establishes a new Federal agency, with an advertised goal of minimizing the risk of a future economic crisis like the one we've seen over the past 2 years. But Congress could go a long way toward preventing such damaging boom and bust cycles by changing its existing mandate for one of the most important stewards of our economy: the Federal Reserve. The Humphrey Hawkins Full Employment Act of 1978 directed the Fed to focus on two goals that are often at odds: maximizing employment over the short-run while guaranteeing price stability over the long-term. This dual mandate has put the Fed in an impossible situation with regard to managing the economy. Multiple goals that may sometimes be in conflict can increase the chance of an important miscalculation. Monetary policy, in fact, played a key role in this latest economic crisis. The Federal Reserve held interest rates too low for too long earlier this decade, sparking an expansion of credit that fueled a housing bubble that eventually burst and caused an all-out crisis. As we emerge from this recession, I fear that we may be on the cusp of yet another damaging cycle. If the Fed is too slow to act in withdrawing its substantial stimulus as the economy recovers, we will end up with a nasty bout of inflation in the coming years. And the Fed would then have to slam on the brakes and hike interest rates to wring inflation out of the system, costing growth and jobs in the process.

We need to stop this roller coaster ride. That is why I offered an amendment to this bill that would repeal the Humphrey Hawkins Act and make price stability the Fed's sole mandate. This change is meant to re-focus the Fed on its core mission and make sure that we get one of the key fundamentals of the economy right. Price stability, after all, is a necessary precondition for economic growth, job creation and sound money. A focused and clear mandate from Congress would also increase the Fed's transparency and accountability at a time when many are seeking more information about the actions of our central bank. Unfortunately, my amendment was not made in order by the Rules Committee.

In response to the recent crisis, the Fed has had to take a variety of unorthodox measures to stabilize our credit markets and resuscitate the economy. Many in Congress have felt unease as the Fed has taken emergency actions to rescue individual companies and launch a variety of new credit facilities for an increasing number of banks, financial institutions and even investors. I share this unease and I believe that Congress should have the ability to gather information about these actions and new facilities, with appropriate safeguards and time lags. But I also believe that we must preserve the existing restrictions on opening up monetary policy deliberations and actions to a government audit. Even the appearance of politicians gaining some measure of influence over monetary policy decisions could have disastrous consequences. Political independence is not simply a luxury for our central bank. It is a core principle of good economic policy that yields real benefits for the American people. A number of empirical studies have shown that countries with independent central banks tend to have steadier economic growth and low and stable rates of inflation. This is not surprising. Just as politicians involved in fiscal policy have a bias toward greater spending, monetary policy influenced by politics would have a bias toward looser credit over the short term and therefore higher rates of inflation over the longer term. Financial markets would immediately recognize this and push up our borrowing rates and further weaken our currency.

As we move forward in this process of financial regulatory reform, Congress should strive for robust oversight of the Fed, but it must guard against political interference. In the end, an independent Federal Reserve with a clear and focused single mandate is the best way to achieve the desirable ends of sustainable economic growth, job creation, and low inflation.

## HONORING THE RETIREMENT OF JOANN C. TADLOCK

### HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. JONES. Madam Speaker, I have the privilege of representing the wonderful people of the third district of North Carolina, which includes hundreds of military families and civilians that work for our military.

Today, I would like to honor one such civilian—Mrs. Joann C. Tadlock will retire from the Naval Air Systems Command, Fleet Readiness Center East, Cherry Point, North Carolina on February 3, 2010.

Mrs. Tadlock's distinguished government career spans over 31 years, a career that is full of achievements and accolades that greatly reflect upon her and upon the organizations with which she has served.

In April of 1978, Mrs. Tadlock began her Federal career as a Clerk for the Department of the Interior, holding progressively responsible administrative positions within the Department of the Interior and the Naval Air Systems Command.

Mrs. Tadlock returned to school and earned her bachelor's and master's degrees and became a Personnel Management and Equal Employment Opportunity Intern.

Mrs. Tadlock subsequently served as the principal classifier for the Human Resources Office, Marine Corps Air Station Cherry Point and has most recently served as Total Force leader and Navy's Multi-Trade expert in supporting the Fleet's best interests.

Madame Speaker, I am very proud of Mrs. Joann Tadlock and I thank her on her many years of service to our great nation and our military. Her contributions to the Department of Navy will be missed as she moves forward to new and exciting opportunities.

I would like to ask my colleagues to join me in congratulating Mrs. Joann Tadlock on such an extraordinary career.

Mrs. Tadlock epitomizes the dedication and professionalism that make our Federal government a model all over the world.

God bless Joann, all of our troops, and may God continue to bless America.

## INTRODUCTION OF THE TRANSPARENCY IN CORPORATE MONITORS ACT OF 2009

### HON. STEVE COHEN

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COHEN. Madam Speaker, today I am pleased to introduce legislation today that will provide guidance and prevent abuse in the appointment of corporate monitors to implement deferred and nonprosecution agreements.

Last Congress, the Judiciary Subcommittee on Commercial and Administrative Law led the charge against the politicization of United States Attorneys' Offices in the last Administration. Additionally, both last year and this year, the Subcommittee held hearings on deferred and nonprosecution agreements in criminal cases against corporate defendants, and the selection of corporate monitors to implement those agreements. Those hearings, as well as recent press articles, revealed the need for guidelines to govern the appointment of corporate monitors in these cases.

The Government's use of deferred and nonprosecution agreements as a prosecutorial tool with respect to corporate defendants has grown exponentially in recent years. Unfortunately, the selection and use of corporate monitors to implement those agreements has been tainted by a disturbing lack of guidance, and even more troubling indications of abuse.

In one case, a former U.S. Attorney—Christopher Christie—selected former Attorney General John Ashcroft to serve as a corporate monitor, for which Mr. Ashcroft collected fees of up to $52 million. The circumstances surrounding his appointment and service as a monitor were not made public at the time of his selection and other than the hearings the

Commercial and Administrative Law Subcommittee held on the issue—no provision was ever made for oversight or accountability concerning Mr. Ashcroft's selection or performance as a monitor.

To prevent such reckless abuse from taking place in the future, I have introduced legislation that will prohibit United States attorneys and assistant United States attorneys from acting as or working for corporate monitors for specified periods after their service with the Government terminates. This legislation will provide accountability, transparency, and uniformity in the appointment of corporate monitors to implement deferred and nonprosecution agreements.

Public trust and confidence are essential elements of an effective justice system—our laws and their enforcement must not only be fair, but they must also be perceived as fair. The perception of unfairness and favoritism undermines governmental authority in the justice process. My legislation will help restore fairness and rebuild trust in our public process.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. CHARLIE MELANCON

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. MELANCON. Madam Chair, I rise today on behalf of thousands of families in Louisiana and across the nation who have been devastated by the fraud of Allen Stanford and his financial companies.

Earlier this year, men and women who had played by the rules and worked hard to prepare for retirement and their children's futures learned that they had been cheated out of a lifetime of savings.

While we continue in our efforts to make these families whole, we have a responsibility to ensure that this kind of fraud never again happens in the United States. The investor protections included in H.R. 4173, the Wall Street Reform and Consumer Protection Act are a monumental step toward this goal.

One thing we have learned through this tragedy is that the greed of criminals like Stanford is matched only by the danger of deregulation. The Securities and Exchange Commission, which was designed to prevent this very situation, is deeply flawed. The bill we are now considering reforms the agency and strengthens its authority to effectively and forcefully protect investors and our securities markets.

In addition, the bill creates incentives for whistleblowers to expose crooks like Stanford. Through a new whistleblower bounty program, we will reward individuals who provide tips that lead to the prosecution of fraud.

Finally, under this bill, every financial intermediary who provides advice to an investor will have a fiduciary duty toward them. This standard will force broker-dealers and investment advisers to put first, their customers' interests—not their own pocketbooks.

American citizens need the confidence that their government will act quickly and forcefully to protect their hard-earned savings. The investor protection measures in the Wall Street Reform and Consumer Protection Act will provide families the security they need to prepare for the future.

## PERSONAL EXPLANATION

### HON. ALBIO SIRES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. SIRES. Madam Speaker, I would like to state for the record my position on the following vote I missed on Thursday, December 10, 2009. If present, I would have voted yes during rollcall No. 947 on H. Res. 961, on Ordering the Previous Question providing consideration of the conference report to accompany the bill making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes.

## LIECHTENSTEIN'S COOPERATION ON TAX AND FINANCIAL CRIME ISSUES

### HON. JOHN SULLIVAN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. SULLIVAN. Madam Speaker, I rise to bring to the attention of my colleagues the significant strides that the Principality of Liechtenstein has made through its comprehensive reforms in the regulation of its financial sector over the last nine years. These reforms are impressive. It is clear that Liechtenstein has demonstrated itself to be a trusted and effective partner in combating a wide range of financial crimes, including money laundering, terrorist financing, and tax fraud.

As the Organization for Economic Cooperation and Development (OECD) removed Liechtenstein from its grey list of non-cooperating states in tax matters on November 11, 2009, I would like to use this benchmark to recognize the Principality for its record of achievements in increasing not only the transparency of its financial center internationally, but its increased partnership with the United States. Recent reforms guarantee that Liechtenstein will provide the United States and others with an increasing range of cooperation on international tax matters. Its initial reforms concentrated on anti-money laundering efforts. More recently, the government of Liechtenstein signed an important Tax Information Exchange Agreement with the United States and has concluded negotiations of an Anti-Fraud Agreement with the European Union.

Liechtenstein's reform efforts began in 2000 when it committed itself to reform the regulation of its financial sector to better ensure that its banks and other service providers could not provide financial services to terrorists, drug lords, or other criminals. In 2001, Liechtenstein was taken off the Financial Action Task Force's (FATF) list of non-cooperating countries. Since that time, Liechtenstein has improved its cooperation with the United States and the rest of the international community in the fight against all forms of crime.

Liechtenstein has worked closely with the U.S. government—including the Office of Foreign Asset Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN)—to combat terrorist financing networks. In addition, since 2002, Liechtenstein's Financial Intelligence Unit has been engaged in an ongoing multilateral effort to disclose the financial network of Abdul Qadeer Khan, the founder of Pakistan's nuclear weapons program. Liechtenstein also successfully worked to secure the return to the Iraqi government of a Falcon 50 airplane that had belonged to Saddam Hussein and has worked with the Volcker Commission in investigations of the UN's "Oil for Food" program.

Another step in Liechtenstein's international cooperation on financial crimes was the conclusion of a Mutual Legal Assistance Treaty (MLAT) with the United States in 2002. Additionally, the Tax Information Exchange Agreement (TIEA) between Liechtenstein and the United States was signed in 2008. Once fully implemented in 2010, Liechtenstein and the United States will work closely together on the full range of tax issues, including tax fraud and tax evasion.

Liechtenstein's actions are to be commended. The continued productivity of the U.S.-Liechtenstein partnership is essential to fighting financial crimes and terrorist financing and I thank Liechtenstein for their commitment to these reforms.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. LANGEVIN. Madam Chair, I rise in strong support of H.R. 4173, the Wall Street Reform and Consumer Protection Act, which will rebuild our economy and crack down on Wall Street to prevent another economic collapse caused by institutions that are "too big to fail."

Over the past year, I, like many Rhode Islanders, have been angered by the greed exhibited by Wall Street and other companies that took advantage of their investors, preyed on our constituents, and rewarded executives with outrageous pay packages. With this bill, consumer protection will come first, and irresponsible companies will be held accountable for their actions.

I would like to thank the committees for their work on this bill, and especially want to thank Chairman FRANK for his leadership on this strong reform measure. I encourage all my colleagues to vote for this bill.

## CONGRATULATING WINTON WOODS HIGH SCHOOL FOOTBALL TEAM DIVISION II STATE TITLE

### HON. STEVE DRIEHAUS

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. DRIEHAUS. Madam Speaker, I'd like to congratulate Winton Woods High School on their football team's Division II State Title. Last Friday, December 4, 2009, the Winton Woods Warriors traveled north to Massillon, Ohio, where they brought home the school's first-ever state title with a 42–12 win over Maple Heights. Under the leadership of Coach Troy Everhart, the Warriors capped an outstanding season, boasting a 13–2 record. The Warriors' achievements this season are a source of pride for Winton Woods High School and all of greater Cincinnati. Congratulations, again, to Winton Woods High School on a great season and a great win.

WINTON WOODS HIGH SCHOOL

Dr. Terri Holden, Principal.

Dr. Camille Nasbe, Superintendent.

TEAM ROSTER

2—Cornelius Roberts, 3—Corey Webber, 4—Juan Glover, 5—Tyler Smith, 6—Judge Marvin, 7—Thomas Owens, 8—Demond Hill, 9—Bryon McCorkle, 10—Dominique Brown, 11—Jalen Bradley, 12—Iel Freeman, 14—Julian Barnett, 16—Gary Underwood, 18—Antonio Poole, 20—Donshea Harris, 21—Markus Jackson, 22—Jeremiah Goins, 23—Zack Bomar, 24—Mike Crawford, 25—Chuck Wynn.

26—Antonio Sweeney, 28—Keeno Hollins, 29—Chris Stallworth, 30—Raheem Elston, 32—David Hampton, 33—Aaron Kemper, 34—Harrison Butler, 35—Pryde Geh, 36—Avery Cunningham, 38—Steffon Rodgers, 45—Johnathan Barwick, 46—Zauntre Dyer, 48—Tyler Gist, 50—Da'Sean Dykes, 51—James Richardson, 52—Perrin Cunningham, 53—Brad Thompson, 54—Josh Bailey.

55—Walter Richardson, 56—Harrison Reid, 58—Cameron Brown, 60—Hudson Pande, 61—Desmond Jarman, 62—Carlos Gray, 63—Aaron Patton, 65—Patrick Lett, 67—Tyler Nelson, 68—Jalen Crenshaw, 70—Donavan Myers, 71—D J Darby, 72—Marcus Murphy, 77—Brendan Gordon, 79—Mike Roach, 81—Dominic Bell, 82—Robbie Lewis, 83—Austin Mitchell, 85—Rodney Lofton, 86—Zach Campbell, 89—Stephen Tucker.

Troy Everhard, Head Coach.

Coaches: Jeff Sweeney, Tony Boyd, Isaac Fuller, Andre Parker, Mike Middleton, Derrick Jenkins, Justin Long, Art Wilson, Calvin Johnson, Donnie Gillespie, Larry Turney, Ben Spector.

Herb Woeste, Athletic Director.

## PERSONAL EXPLANATION

### HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. ROYBAL-ALLARD. Madam Speaker, I was unavoidably detained yesterday and was not present for Rollcall vote number 953.

Had I been present, I would have voted "aye."

## TRIBUTE TO VELMA JUSTICE CHILDERS

### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to the late Velma Justice Childers, a Republican leader in Kentucky who proudly planted her feet in the conservative movement.

Ms. Childers was an energetic civic leader always promoting the great attributes of Pikeville, Pike County and Eastern Kentucky. She was a hard working Republican who firmly believed in conservative principles of government. Velma eagerly offered her advice, counsel and friendship to politicians, neighbors and young rising leaders.

Her ability to communicate and rally support for conservative values, earned her reference as the "Grande Dame" of the Kentucky Republican Party. In addition to her passion for civic responsibility, Velma spent a lifetime sharing compassion and encouragement with members of the First Baptist Church of Pikeville for more than 50 years and as a member of the Board of Trustees for the University of the Cumberlands for 13 years, among various other committees across Southern and Eastern Kentucky.

Madam Speaker, I ask my colleagues to join me in memory of Velma Justice Childers, a woman who tirelessly touted the values upon which our country was founded. Her enthusiasm will be missed.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. MARCIA L. FUDGE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Ms. FUDGE. Madam Chair, the failure to regulate financial markets led to the worst financial crisis since the Great Depression. Reforming our financial system is one major part of restoring our economy's health. Today this Congress and President Obama are taking effective steps to bring our economy back from the brink of disaster.

The Act is crucial in curbing the predatory practices of the past. It will protect consumers from predatory lending abuses and industry gimmicks.

This bill will guard a family's retirement funds, college savings, home, and business from unnecessary risk by executives, lenders, and speculators.

It will bring transparency and accountability into the financial system.

I commend Chairman FRANK for his tireless efforts to protect the American economy and taxpayers.

## INTRODUCTION OF A CONCURRENT RESOLUTION "REQUESTING THAT THE PRESIDENT ISSUE A PROCLAMATION ANNUALLY CALLING UPON THE PEOPLE OF THE UNITED STATES TO OBSERVE GLOBAL FAMILY DAY, ONE DAY OF PEACE AND SHARING, AND FOR OTHER PURPOSES"

### HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CONYERS. Madam Speaker, today I rise to introduce a resolution requesting that the President issue an annual proclamation that calls upon the people of the United States to observe Global Family Day, One Day of Peace and Sharing. Joining me in this effort is the gentleman from Ohio, DENNIS KUCINICH, and I would like to acknowledge him at this time.

Global Family Day, One Day of Peace and Sharing, is an annual observance, occurring on January 1st, that was conceived by children to further the cause of peace, sharing, and understanding among all members of the international community. As the year is coming to a close, I introduce this resolution for a few reasons.

First, I believe it is important that all people, regardless of race, culture, religion or economic status, celebrate life on earth together as one human family. A global holiday, like Global Family Day, One Day of Peace and Sharing, allows people around the world to realize this ideal by promoting global fellowship and cooperation.

A better appreciation for one another can only lead to the eradication of human suffering that results from violence, hunger, poverty, and other social ills. Practicing better global family values at the start of a new year may mean the realization of such concepts of goodwill and harmony throughout the year.

Second, I know that one day dedicated to global peace and cooperation is a day that every Member of Congress can support. Despite our differences, each of us has an interest in pursuing peaceful solutions to many of our contemporary problems. From worldwide hunger, to international human trafficking, to widespread religious intolerance, we are all impassioned by issues that call for a peaceful resolution to achieve a more desirable world.

Global Family Day, One Day of Peace and Sharing, can be one of the vehicles with which we unite to pursue these various missions for peace. A resolution calling for the recognition of Global Family Day, One Day of Peace and Sharing has always received bipartisan support as a bipartisan Congress adopted this resolution in 2000 and 2006. I am confident that there will be a similar reception this Congress.

Finally, while the Congress has adopted this resolution on other occasions, in the bipartisan spirit I have just described, we have yet to have a President issue a proclamation calling upon the people of the United States to recognize Global Family Day, One Day of Peace and Sharing.

We ask that the President and the First Family lead the nation in observing Global Family Day, One Day of Peace and Sharing

on January 1, 2010. Those participating in the global holiday can be invited to ring a bell, share a meal, and make a pledge in the name of peace. Through these acts we will become better neighbors within the global community.

In closing, I ask that my colleagues join me in support of this resolution recognizing Global Family Day, One Day of Peace and Sharing and requesting that the President lead the country in this holiday's recognition. By working together as one global family, we can better meet the challenges humanity will surely face in the years to come.

## THE FINANCIAL CRISIS, TARP AND PAY-GO

### HON. PAUL RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. RYAN of Wisconsin. Madam Speaker, in September of 2008, credit markets seized up. Many did not understand the full ramifications of the financial crisis at the time that has since resulted in a deep recession with high unemployment. To respond to that crisis, Congress came together on a bipartisan basis and enacted the Emergency Economic Stabilization Act of 2008, EESA, that included the Troubled Asset Relief Program, TARP.

During the debate on that bill, there was tremendous controversy over the $700 billion in authority the administration was seeking to help stabilize financial markets and to avoid a much more severe economic crisis. Treasury was ultimately granted this extraordinary authority, but Congress included many key taxpayer protections. Among those protections, we wanted to make sure that TARP did not become a piggy bank for Congress to use to fund other programs.

The Senate has a budget procedure that is designed to keep funding designated as an emergency from being used as an offset in the future for budget enforcement purposes. The House does not have this procedure for mandatory spending bills, such as the TARP, or tax legislation. It was agreed to at that time that TARP funds could not be used as an offset for new programs or tax reductions for the purposes of budget enforcement. The EESA designated TARP as an emergency for the purposes of Senate enforcement. In the House, the budget is enforced through clause 10 of rule XXI of the Rules of the House of Representatives, the pay-as-you-go rule, and the Congressional Budget Act of 1974.

In order to assure this, Section 204 of the TARP law includes the following language: "rescissions of any amounts provided in this Act shall not be counted for purposes of budget enforcement."

This language can only mean one of two things: (1) It means legislation considered by the House of Representatives must find other offsets for new spending or tax reductions and may not use unexpended TARP resources to comply with budget-related points of order; or (2) It means nothing.

The budget and the treatment of TARP and emergencies is a technical matter and it posed a challenge to draft this language under the extraordinary circumstances and pressures involved in the drafting of the EESA. However, the clear intent of the counsels involved in the drafting of the specific legislative language was that TARP should not be used to fund new programs, the expansion of existing programs, or for tax reductions.

The Wall Street Reform and Consumer Protection Act of 2009, H.R. 4173, includes language effectively cancelling $10.2 billion in TARP funds in order to offset the effects of increased spending, and only by virtue of the TARP funds, is considered to abide by the pay-as-you-go point of order.

Using TARP to offset new programs is clearly inconsistent with the agreement on the TARP and the EESA when it was enacted on a bipartisan basis in 2008 and I believe it is inconsistent with a plain reading of the law.

This was an instance when we were working together and it is unfortunate that the law and the rules are now being interpreted to allow the TARP to become a piggy bank to increase spending, deficits, and debt.

## HONORING AMANDA FERRANDINO FOR RECEIVING THE PRESTIGIOUS FULBRIGHT SCHOLARSHIP

### HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ISRAEL. Madam Speaker, I rise today to acknowledge a young woman in my district, Amanda Ferrandino.

Ms. Ferrandino has been selected to receive a prestigious Fulbright award. The Fulbright Program is an international exchange program that is sponsored by the U.S. Department of State. Recipients of this award are selected on the basis of academic or professional achievement, as well as demonstrated leadership in their chosen fields. Ms. Ferrandino plans to study Anthropology in Bangladesh.

I congratulate her on this accomplishment and applaud her contribution to global education and international relations.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. ETHERIDGE. Madam Chair, I rise in support of H.R. 4173, the Wall Street Reform and Consumer Protection Act of 2009.

The chaos that began last year on Wall Street has cost the country billions of dollars, rippled throughout the economy, and threatened to topple our entire financial system. Strong measures are required to address such a breakdown, and H.R. 4173 delivers a comprehensive set of financial regulations that increase accountability and oversight for Wall Street and much of America's financial sector.

Earlier this year we saw the widespread damage that can occur when institutions like AIG or Lehman Brothers fail. This bill makes sure the taxpayer is not responsible for bailing out such firms, by establishing a process for dismantling failing financial institutions. By creating a new Systemic Dissolution Fund, large Wall Street firms will be in charge of paying the cost for risks they create instead of taxpayers. In addition, a Financial Stability Council will be created to identify and regulate financial institutions that are so large or interconnected that they pose a system risk to the economy as a whole. We must avoid the problems posed by firms that are "too big to fail" in the future.

For years, I have argued that the wild west of speculation in derivatives markets must end. Unregulated speculation may be responsible for wide swings and increases in the price of energy for consumers and feed for farms. This bill would strengthen derivatives market oversight, and for the first time ever, regulate the over-the-counter derivatives market for transactions between dealers and major swap participants. This provision will help prevent entities from driving up the cost of commodities and products and manufacturing risk in the larger economy.

H.R. 4173 also takes a major step forward in consumer protection by creating the Consumer Financial Protection Agency (CFPA). This agency would be devoted to stopping unfair practices and preventing abusive financial products from entering the marketplace. The CFPA would cover a wide range of financial institutions, including non-bank financial institutions, and would impose effective consumer protections for subprime mortgages, overdraft fees, credit card practices, and other financial products.

This bill includes other critical provisions for oversight and streamlining of the financial system like creating a Federal Insurance Office, reforming the credit ratings agencies that assess the value of the many financial products in our economy, and cleans up abusive practices in the mortgage lending industry that contributed to the collapse of the housing market. This regulation is long overdue and will benefit all Americans and businesses that depend on our financial institutions.

I support this reform of our financial industry, and I urge my colleagues to join me in voting for its passage.

## A TRIBUTE TO POLICE LT. BILL L. CRANFILL FOR THREE DECADES OF SERVICE TO THE CITIZENS OF REDLANDS, CA

### HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LEWIS of California. Madam Speaker, I would like to pay tribute today to Redlands Police Lt. Bill L. Cranfill, who has provided protection and service to the city's residents for more than three decades and has helped make the force one of the most professional and well-respected in the region.

Bill Cranfill began working with the Redlands Police Department in 1976 as a volunteer reserve officer, and was hired as a permanent officer in May 1978. He graduated

from the San Bernardino County Sheriff's Academy that year and holds both a bachelor's and master's degree from La Salle University.

Officer Cranfill won the first of the two Meritorious Service Awards he has received in 1980 for rescuing a woman from a burning building.

He was promoted to corporal in 1981 and was made a sergeant in 1985. After completing a wide range of leadership training, including the FBI Academy, he became a lieutenant in 1998.

Lieutenant Cranfill has helped to make the Redlands Police Department one of the most professional and progressive forces in the region, working alongside Police Chief Jim Bueerman and other top officers like Lt. Dan Shefcik, Lt. Rogelio Garcia and Commander Tom Fitzmaurice.

During his career, Lieutenant Cranfill has headed the Patrol Services Bureau and the Investigative Services Bureau. He has been the department's crisis negotiation coordinator, and was named the Redlands Public Safety Manager of the Year in 2008.

For many in the Redlands community, however, Lieutenant Cranfill is known as the Director of Public Safety for the University of Redlands. Serving under contract in that role for much of the past decade, Lieutenant Cranfill has helped the university maintain top standards for security, courtesy and even-handed discipline with an open campus that is an asset to the community around it.

Beyond his high-profile role with the university, Lieutenant Cranfill is well-known for community involvement. He has helped run the Redlands Emergency Services Academy, which trains high school graduates in police and fire techniques, and is a strong supporter of the Redlands Bicycle Classic, an internationally-known bicycle race.

He is an active member of the Redlands Morning Kiwanis and has served as the Redlands Police Department's representative to the United Way. He has volunteered numerous times for Tipa-Cop fundraisers for local charities, ran in the annual Law Enforcement Torch Run and Redlands Community Hospital Run for Life benefiting the Special Olympics and participated frequently in the Loma Linda University Medical Center Children's Hospital Halloween event.

Madam Speaker, after 30 years of dedication to law enforcement, Lt. Bill L. Cranfill is retiring this month. Please join me in thanking him for his decades of providing safety and service to the residents of Redlands, and wish him well in his future endeavors.

## INTRODUCTION OF THE STOPP ACT

### HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. GOODLATTE. Madam Speaker, private ownership of property is vital to our freedom and our prosperity, and is one of the most fundamental principles embedded in our Constitution. The Founders realized the importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken ''for public use, without just compensation.'' This clause created two conditions to the government taking private property: That the subsequent use of the property is for the public and that the government gives the property owners just compensation.

However, the Supreme Court's recent 5–4 decision in Kelo v. City of New London is a step in the opposite direction. This controversial ruling expands the ability of State and local governments to exercise eminent domain powers to seize property under the guise of ''economic development'' when the ''public use'' is as incidental as generating tax revenues or creating jobs, even in situations where the government takes property from one private individual and gives it to another private entity.

By defining ''public use'' so expansively, the Court essentially erased any protection for private property as understood by the Founders of our Nation. In the wake of this decision, State and local governments can use eminent domain powers to take the property of any individual for nearly any reason. Cities may now bulldoze private citizens' homes, farms, and small businesses to make way for shopping malls or other developments.

I completely agree with Justice O'Connor who, in her dissent in the Kelo case, wrote: ''Today the Court abandons this long-held, basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings ''for public use'' is to wash out any distinction between private and public use of property—and thereby effectively to delete the words ''for public use'' from the Takings Clause of the Fifth Amendment.''

For these reasons, I have introduced legislation with Representative STEPHANIE HERSETH SANDLIN to ban all Federal economic development money for a period of two years for any State or local government that uses eminent domain for private economic development purposes.

The STOPP act also prohibits funding to a State or local government that fails to provide relocation assistance to a person displaced from property by any use of eminent domain for an economic development purpose. Relocation assistance must meet the level and be of the same manner as that required under the Uniform Relocation and Real Property Acquisition Policies Act of 1970. The STOPP act also provides landowners with a right to enforce the prohibition of funds under this act.

No one should have to live in fear of the government snatching up their home, farm, or business, and the Private Property Rights Protection Act will help to create the incentives to ensure that these abuses do not occur in the future.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Ms. LEE of California. Madam Chair, I rise in support of H.R. 4173 and Chairman BARNEY FRANK's manager's amendment.

I want to thank the Chairman for his hard work and dedication to Comprehensive financial reform and strong protections for consumers. It is vital that we have a stand alone agency whose sole mission is to protect the rights of consumers.

For too long our financial regulatory framework put the protection and stability of financial institutions first and too often ignored the impact on American consumers and retail investors.

The Consumer Financial Protection Agency will help ensure that Wall Street will not be able to bring our economy to the brink of disaster ever again.

I also want to thank Chairman FRANK and the members of the Financial Services Committee for working with Congresswoman MAXINE WATERS and the Congressional Black Caucus to include several important provisions in the bill.

Specifically, thanks to their focused work, this bill will include $3 billion in funds to provide relief for unemployed homeowners. It will extend credit for the recently unemployed that will help save homes from foreclosure.

This bill will stop the spread of foreclosure rescue scams and includes a vital $1 billion increase in Neighborhood Stabilization Funds to protect our hardest hit communities.

Lower income communities and communities of color were targeted for these unaffordable and unethical products that are now driving millions of families into foreclosure.

Access to financial services and insurance products for historically underserved communities is strengthened.

The Office of Minority Inclusion, whose goal will be to make sure that all Americans have the equal protection of the work of the entire Federal financial regulatory framework is included in this bill.

Fairness of access and opportunity, transparency and strong enforcement of securities regulations are vital to bringing our economy back from recession and ensuring that the uncontrolled risk taking on Wall Street will never again have such a devastating impact on the entire economy.

Again, thank you Chairman FRANK, Congresswoman WATERS and the Financial Services Committee for such an important bill.

## HONORING THE LIFE ACHIEVEMENT OF JO JOHNSON

### HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COSTA. Madam Speaker, I rise today to commend Jo Johnson, the Executive Director of the Fresno-Madera Agency on Aging in Fresno, California as she prepares to retire after 18 years of dedicated service to seniors and the community of Fresno.

Jo Johnson is a Valley native, born in Fresno, California. She is a graduate of the Class of 1968 from Roosevelt High School and received her Bachelor's Degree from California State University, Fresno in 1972. Jo is married to Mr. John J. Johnson, Jr.

Jo has spent the majority of her career working as a selfless public servant. In 1973, she was hired by the Fresno County Probation Department as a Research Analyst. Then, in 1974, she moved to the State of Oregon to work as a Social Worker in the Children's Services Division. Jo returned to the Central Valley in 1975 and worked as a Probation Officer for the Tulare County Probation Department in Tulare, California until 1984. After spending time in the public sector, Jo worked as a paralegal in her husband's office in Big Bear Lake, California. In 1991, Jo was hired by the Fresno-Madera Area Agency on Aging (FMAAA).

Serving as Executive Director, Jo has helped direct the Fresno-Madera Agency on Aging to numerous accomplishments. When she was first hired in 1991, Jo created the Valley Coalition of Area Agencies on Aging which brought together the various county agencies to plan and direct legislation which would benefit the elderly. At the National level, Jo has participated in the 1994 Health Care University conference in Washington, D.C. sponsored by the Administration on Aging. Jo also received a Congressional appointment to the California delegation for the 1995 White House Conference on Aging. At the State level, she was appointed by the California Department on Aging to numerous committees helping to create nutrition policy and shape administrative structure.

Under Jo's guidance, the Fresno-Madera Agency on Aging became the first California area agency to own real estate. The Fresno-Madera Agency on Aging is the only statewide Agency to develop a campus of collocated services that facilitates immediate responses to consumer needs. Jo helped create a system that supports a team that investigates elder abuse and was the first to be recognized by the California Attorney General. The Fresno-Madera Agency on Aging has taken their original investment of $1.5 million in community development block grants provided by the City of Fresno and helped create $25 million worth of real property on an 8 acre campus. Furthermore, over 17 years ago, Jo was instrumental in the creation of the FMAAA's annual event "Seniors Serving Seniors". This event honoring seniors and those who help seniors is held in May of each year and is overwhelmingly successful because of Jo's love for seniors.

The leadership that Jo has shown for the senior community of Fresno has been steadfast during her time of service. Jo serves as an outstanding example for those who truly want to make a positive difference. I am honored to not only call Jo a friend but also a champion for seniors. Madam Speaker, I ask my colleagues to rise with me today to express our appreciation for Jo Johnson's dedicated service to seniors and her community.

## HONORING DR. TERRI JULIAN, DIRECTOR FOR THE JACK H. WISBY JR. POST TRAUMATIC STRESS DISORDER TREATMENT CENTER

### HON. ERIC J.J. MASSA

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. MASSA. Madam Speaker, I rise today to honor Dr. Terri Julian, Director for the Jack H. Wisby Jr. Post Traumatic Stress Disorder Clinic and newly instituted Women's Residential Program, at the Batavia Campus of the Veterans Administration Western New York Health System VAWNYHS. Dr. Julian is the past recipient of the Federal Woman of the Year Award, 2006, and it is my privilege to recognize her significant contributions to the VA system, made on behalf of our veterans.

Dr. Julian was the major force behind the development of the Women's Residential Program at the Batavia campus of VAWNYHS. This is one of two programs nationwide in the Veterans Health Administration, VHA, that provides female veterans treatment for military sexual and/or combat trauma. The all-female staff includes a psychologist, social worker and social service assistants who collectively work to improve the care provided to afflicted female veterans. Dr. Julian's dedicated efforts to the program enable its practitioners to provide high-quality care to our nation's female veterans, who, it is recognized by the VHA, have a recovery process that is unique from their male counterparts.

In addition to the Women's Residential Program, Dr. Julian has improved the organizational capacity of the Jack H. Wisby Jr. Post Traumatic Stress Disorder Clinic used by the entire Batavia campus of the VAWNYHS so it now provides the highest quality care for stress-related injuries to all veterans, regardless of gender.

One need only look to Dr. Julian's numerous accolades to understand her commitment and passion for comprehensive care to veterans. As a leader in her field, she is often requested by her peers to lead workshop and training programs, author professional articles and give expert advice on PTSD program development and implementation.

Our servicemen and women sacrifice immensely for our great nation and I am honored that they are recipients of the quality care provided by Dr. Julian and those like her in the VHA. On behalf of the United States Congress, it is my privilege to publically and permanently laud Dr. Terri Julian's dedicated efforts to our veterans.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2008

SPEECH OF

### HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. STARK. Madam Chair, I rise to support the Wall Street Reform and Consumer Protection Act because it is time that the Wild West of financial "innovation" had a sheriff.

Just over a year ago, I stood on this floor and twice voted against President Bush's taxpayer-funded bailout of Wall Street. I would cast the same votes again. I hope that this legislation will mean that taxpayers will never again be on the hook for the reckless behavior of financiers.

This legislation will help to end "too big to fail" by providing dissolution authority to regulators. Instead of being bailed out with tax dollars, a company like AIG would be dismantled in an orderly and fair process. Shareholders would be wiped out and executives dismissed. This would be paid for, not with tax dollars, but by an assessment on financial firms. The ideal solution would be the reinstatement of the Glass-Steagall Act, preventing the merger of commercial and investment banks. However, I am glad that this bill at least enables swift intervention and provides a financing mechanism so that bailouts will be a thing of the past.

In addition to being forced to pay for the excesses of Wall Street, consumers have been preyed upon by financial services companies. These companies have profited from unfair and abusive lending practices, including steering families into subprime mortgages. Regulation has been lax or non-existent and there is no single entity charged with looking out for consumers. With the formation of a Consumer Financial Protection Agency an agency will, for the first time, be charged with ensuring that families are not exposed to toxic financial offerings.

Finally, I wholeheartedly support the so-called "cram down" amendment, to allow courts to reset the principal for home mortgages in bankruptcy proceedings. This judicial discretion is allowed for every other type of debt—a reminder of the double standard that has too frequently separated average families from Wall Street.

I urge all of my colleagues to put consumer interests over those of the Big Banks. Let's finally start policing Wall Street. Vote "yes."

## HONORING THE RETIREMENT OF LT. FRANK HENTSCHELL

### HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. STUPAK. Madam Speaker, I rise to recognize Lt. Frank Hentschell of Munising,

Michigan on his retirement from the Michigan State Police after 36 years of dedicated law enforcement service. Lt. Hentschell's enthusiasm for his work and commitment to the communities he has served is testament to the caliber of officers in the Michigan State Police.

A native of the Upper Peninsula, Lt. Hentschell started his career in uniform as a Boy Scout. He made Eagle Scout, the highest rank in Boy Scouts, by age 13 and continues to be active in Boy Scouts to this day.

As a graduate of Northern Michigan University's Police Academy, Lt. Hentschell was also certified as an EMT and firefighter. His police career began in 1973 with the Manistique Public Safety Department, where he served for five years before leaving the post to help re-establish the Chocolay Police Department near Marquette, Michigan. He served as chief of the Chocolay Police Department for one year before leaving to join the Michigan State Police in 1984.

Following graduation from the 98th State Police Training Academy in Lansing, Michigan, Lt. Hentschell was assigned to the State Police post in Flat Rock down in Southeast Michigan. There he became a member of the Emergency Support Team and served from 1987 to 1995. He also served as a trooper at posts in Erie and Munising and as sergeant at the post in Gaylord, Michigan. He earned the title of Lieutenant in 1995 when he returned to the Upper Peninsula to serve at the Iron River Michigan State Police Post. In 2001, Lt. Hentschell came back to Munising where he has served since.

Over the years, Lt. Hentschell's hard work and dedication has been recognized through a number of written commendations. He received the 1989 Officer of the Year award from Monroe County while serving at the Flat Rock post, and Kiwanian of the Year while serving in Iron River.

Lt. Hentschell's wife Donna has been by his side throughout his career. They will remain in the Munising area following his retirement and look forward to travelling together and spending time with their daughter Sandra and granddaughter, Katie.

Madam Speaker, Lt. Frank Hentschell has spent 36 years of his life enforcing the law and protecting the citizens of Michigan. His lifelong devotion to law enforcement should be commended. Throughout his career he has touched the lives of countless individuals he has worked with and served. I ask Madam Speaker, that you and the entire U.S. House of Representatives, join me in recognizing Lt. Hentschell for his courage, his dedication, and his years of service on his retirement from the Michigan State Police.

## THE PUBLIC LANDS REHABILITATION AND JOB CREATION ACT

### HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. LINDA T. SÁNCHEZ of California. Madam Speaker, I rise today in support of the Public Lands Rehabilitation and Job Creation Act.

The landscape of America is dotted with national treasures, including our national parks, monuments, and forests. From Yosemite National Park in my home state of California to Acadia National Park in Maine, national parks are of recognized for the natural splendor that surrounds us and conserving our precious natural resources for future generations must be a priority.

Since 1916, the National Park Service has admirably preserved and protected our natural treasures. In recent years, however, a log jam of maintenance and safety issues has developed. Structures are unsound, trails overgrown, roads impassable, and cabins unusable. A lack of resources, both money and manpower, has contributed to this situation. If we invest in repairing, rebuilding, and rehabilitating these resources now, we will not only have a safer infrastructure and a brighter future, we will employ tens of thousands of people across the nation.

Since January 2008, the number of unemployed Americans has grown each month. In some areas, the unemployment rate has reached more than twenty percent. We have taken steps to stimulate the economy and catch people in the social safety net, but we have not done enough. While a stronger safety net helps families survive, in the end, Americans don't want unemployment checks, they want to work.

We have people without work and work without people. The solution could not be clearer. We can put people back to work now and restore our national treasures by passing this bill to increase funding for the National Park Service and National Forest Service.

Despite almost 8,000 permanent and seasonal employees, nearly every park manager asserts that their current staffing level is woefully insufficient to take on identified maintenance issues. Within four to six months of receiving additional funds, the Park Service can prepare needed plans and complete essential hiring. These new employees will resurface roads; rehabilitate trails; repair visitor centers, museums, and campsites; and restore wild areas to their previous pristine nature. The new opportunities will range from lower-skilled, entry-level work to highly paid, highly skilled, professional and master craftsman jobs.

Similarly, the Forest Service can create at least fourteen and a half direct hire jobs in well-paying fields like engineering, design, and construction for every million dollars we invest in road repair and decommissioning.

Opportunities to improve roads, buildings, and other infrastructure exist in urban and rural areas across the nation, from the Theodore Roosevelt Birthplace in New York City, to Fort Sumter in South Carolina; and from Cabrillo National Monument in San Diego to the Hiawatha National Forest in Michigan.

Without additional investment, our infrastructure problems will continue to grow and hinder use and enjoyment of our nation's natural resources. Theodore Roosevelt once said that we should ensure the mountains and trees and canyons and streams are preserved for our children and our children's children, ''with their majestic beauty all unmarred.'' If we continue to neglect our greatest national treasures, our problems will fester and future generations will have less to enjoy.

We can cure this oversight through increased investments that will put more than 50,000 Americans back to work, performing needed, meaningful tasks that our children and grandchildren will enjoy for years to come.

Congress rarely has a chance to act on opportunities this well paired. We should put Americans back to work and preserve our public lands for future generations. We cannot let this opportunity slip by. We need these jobs, and we need to pass the Public Lands Rehabilitation and Job Creation Act.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. EARL BLUMENAUER

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. BLUMENAUER. Madam Chair, like many pieces of major, ground-breaking legislation, today's product is a hybrid, combining some good with some questionable provisions. On balance, I think the product is positive and begins a step towards reorienting the protections in our financial system to deal with families, consumers, and the integrity of our institutions. The potential meltdown we faced last fall, the bursting of an unsustainable housing bubble, and radically flawed and abusive financial practices are among the many sources to blame. So, unfortunately, were a too lax financial regulatory system and Federal Reserve that in too many cases enabled reckless behavior.

There's plenty of blame for past administrations and Congresses that were too interested in the collection of special interests to appropriately protect the public interest. To be sure, some of this blame rests at the footsteps of American consumers, a few of whom actually abused the system themselves, too many of whom were simply uninformed or did not exercise their own due diligence. On balance, it was the system that failed and we are all paying the price and will for years to come.

This legislation, while the result of a number of compromises, is an important step towards rebalancing priorities and strengthening the protective institutions. I voted in favor of this as a symbol of support for a longer-term process of reform. This is the launch of an extensive process, and it represents a landmark.

Passing the most significant reform bill in decades is an accomplishment that I hope will lead to productive action from the Senate, legislation the President can sign, and, most important, a commitment to continue the process of protection and reform to strike the right balance—legislation and a regulatory process that protects citizens with a touch as light as possible while still being able to do the job. Hopefully, this will inspire everybody—in Congress, in the administration, in the regulatory agencies, in the industry, and in American homes—to play the roles that only they can assume so that the horrific abuses of the financial system become a distant memory.

## INTRODUCTION OF H. RES. ___, EXPRESSING SYMPATHY FOR AND SOLIDARITY WITH THE PEOPLE OF THE RUSSIAN FEDERATION FOLLOWING THE BOMBING OF THE NEVSKY EXPRESS

### HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to introduce a resolution expressing sympathy for and solidarity with the people of the Russian Federation following the bombing of the Nevsky Express. This is a simple measure, but an important one. After our Nation suffered the terrorist attacks of 2001, Russia was among the first to reach out and offer unqualified condolences and support. Madam Speaker, too often when the Russians hear from this body they hear moralistic statements of condemnation and outrage. In the spirit of fairness and mutual respect, now is the time for Russia to hear our genuine sympathy and support. We all face a common enemy in the terrorists and extremists who would murder innocents to advance an ideology. Let us stand together with our Russian neighbors in their moment of sorrow and work together for a safer world. I urge my colleagues to support this resolution.

## THE DECEMBER 4TH FIRE IN THE CITY OF PERM, RUSSIA

### HON. JAMES R. LANGEVIN

OF RHODE ISLAND

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LANGEVIN. Madam Speaker, I rise today to express my deep sorrow over the tragic fire that took the lives of one hundred forty-two people at a nightclub in the city of Perm, Russia, on December 4th.

News of this fire hit close to home for me, and for many of my constituents, as it closely mirrors the devastating 2003 Station Nightclub fire in West Warwick, Rhode Island, which killed 100 people and injured over 200 more. According to early reports, the Perm fire started when performance pyrotechnics ignited the ceiling of the nightclub, sending patrons stampeding for one narrow exit. One hundred forty two people were killed and scores more were injured as patrons tried to escape the flames.

In the United States, fires caused over $15.5 billion in damages last year, but their most horrific toll were the over 3,400 lives, including 118 firefighters, who were lost as a result. Studies have shown that fire sprinklers can dramatically reduce property damage and, more importantly, save lives. In fact, the National Fire Protection Association has no record of a fire killing more than two people in a public assembly, or an educational, institutional or residential building, with a complete and fully operational automatic fire sprinkler system.

This is why earlier this year I reintroduced the Fire Sprinkler Incentive Act of 2009 that provides tax incentives for property owners to retrofit buildings with automatic fire sprinkler systems. I hope that through this and other measures, we can raise awareness and improve fire safety—not only in this country, but around the world—and ensure that tragedies like those in Russia and Rhode Island are never repeated.

I want to once again extend my sympathy, and that of the people of Rhode Island, for the families of the victims of the Perm fire and to the Russian people. We know all too well the pain and loss you are feeling, and we send our thoughts and prayers to your community in this difficult time.

## RECOGNIZING THE ENGAGEMENT OF MARC WIRTZ AND AMANDA HASLAM

### HON. DANIEL E. LUNGREN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. DANIEL E. LUNGREN of California. Madam Speaker, I rise today to announce that Marc Wirtz, an intern in my office, proposed to his girlfriend of 4 years, Amanda Haslam, at the top of our Nation's Capitol at sunset. I am pleased to congratulate the new couple and wish them the very best in their future together.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mrs. MCCARTHY of New York. Madam Chair, I would like to thank Chairman FRANK and his staff for working with me on a clarification included in the Manager's Amendment. The provision addresses how the Financial Services Oversight Council and the Federal Reserve should interact and supervise financial holding companies that do not own banks, but which are subject to stricter standards because the Council has found them to be systemically risky.

The provision requires the Federal Reserve to be flexible when applying the standards to non-bank holding companies, rather than using a bank-centric approach that may not be appropriate for their structure. In addition, the Federal Reserve will have to consult with the Federal Insurance Office when determining how best to supervise insurance companies that are subject to stricter standards. For companies that are also foreign-based, the Federal Reserve and the Oversight Council must take into consideration if the company has comparable home-country supervision and decide how best to coordinate with that supervision. These minor clarifications help to ensure that institutions which are not banks will not be forced to comply with regulations that do not fit their business structure.

The beauty of the U.S. financial system is diversity, both in products and in structure. It is important to preserve that diversity for the purpose of domestic and international competition. I thank Chairman FRANK for his willingness to incorporate these changes into the manager's amendment.

## HONORING CHEYENNE SPETZLER OF HUMBOLDT COUNTY, CALIFORNIA

### HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. THOMPSON of California. Madam Speaker, I rise today to recognize Cheyenne Spetzler, Chief Operations Officer of Open Door Community Health Centers, of Humboldt County, California. Ms. Spetzler has dedicated 30 years to providing quality health care for the people of Humboldt and Del Norte Counties.

Beginning as a volunteer, Cheyenne has worked at all levels of Open Door Community Health Centers, ultimately becoming responsible for daily operations of the clinic system. Under her leadership, the original part-time clinic staffed by volunteers developed into a comprehensive network of nine licensed facilities and mobile medical programs throughout the two counties. Ms. Spetzler led the team responsible for the addition of the Del Norte Community Health Center in 1990, the Eureka Community Health Center in 1991 and the Burre Dental Center in Eureka in 2003.

Today, the Open Door Community Health Centers provide medical, dental and mental health care to more than 40,000 individuals annually and employ a staff of more than 350. The Open Door network provides health care to approximately one-third of the total population from this large rural area the size of Connecticut, and is the largest safety-net provider in Northwestern California.

Ms. Spetzler has served the people of California as a long time board member of the statewide Reproductive Health Association and as a member of numerous state and local associations and committees. She also continues to promote healthy living through her passion for sports, including the development of women's soccer at Humboldt State University, first as a club team and later as a fully intercollegiate women's soccer team.

Cheyenne Spetzler is also a respected Mayan scholar who has taught Mayan Hieroglyphic Decipherment at the University of Texas at Austin and Humboldt State University in Arcata. She served as primary researcher for the NOVA television special ''Cracking the Maya Code'' released in 2008.

Ms. Spetzler is a respected member of the community, highly regarded for her successful efforts to develop health care facilities, which meet community health care needs through their focus on health education, access to care and prevention.

Madam Speaker, it is appropriate at this time that we recognize Cheyenne Spetzler for her unwavering leadership and dedication to improving the health of California's North Coast communities.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. TODD TIAHRT

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. TIAHRT. Madam Chair, on June 30, 2009, the Obama Administration released details of its proposal to establish a Consumer Financial Protection Agency as an independent agency in the executive branch to regulate the provision of financial products and services to consumers. Five months later, Congressman FRANK, Chairman of the House Financial Services Committee, has turned this proposal into a 1,300-page bill that further extends the federal government's hands into more aspects of our economy.

I oppose this legislation for several reasons. One, it will permanently extend the Troubled Assets Relief Program (TARP)—something that I've been actively trying to end. I recently introduced legislation that will effectively end TARP by eliminating the Treasury Secretary's authority to utilize this program. This bill also creates another czar—a Credit Czar. This unelected official is granted the authority to restrict access to credit and impose taxes on consumers and small businesses.

These reforms will continue to perpetuate the bailout mentality that has plagued our Nation and eliminate access to credit for many small businesses and families at a time when they need it most.

One of the most troubling aspects of this bill is the vague, subjective standards that non-financial companies must meet. One such example of the bill's vagueness is found in the definition of businesses that engage in "financial activities" and those that pose a "systematic risk" to the stability of the financial market.

A business that engages in "financial activities," is now subject to increased regulations and fees. Exactly who comes under this definition, however, is not that clear. Maybe this will fall under the new "Credit Czar's" job description. Nonetheless, this bill will drastically affect businesses, specifically non-financial businesses that had no part in the irresponsible decisions that lead to the market collapse in 2008.

Vague definitions expose non-financial businesses that utilize the commodity and derivatives markets to manage risk and plan for the future. These markets, which date from the 1980s, involve hedgers. Hedgers, producers or commercial users of commodities, trade in futures to offset price risk. They use the markets to lock in today's price for transactions that will occur in the future, shielding their businesses from unfavorable price changes.

This bill restricts the use of these practical business tools. These practical tools encourage job creation and provide customized hedges to help businesses like farmers, grocery stores and energy companies to manage price volatility, so that retail prices can remain low and stable. Yet H.R. 4173 authorizes government regulators to arbitrarily impose capital and margin requirements for "over the counter" (OTC) derivatives, and impose new capital requirements for cleared swaps, which would lead to increased retail prices and make it less likely that corporations could engage in responsible risk management.

Companies that utilize these markets to shield themselves from future risk and uncertainty in the energy markets should not be penalized for planning ahead. Unless the definition of "financial activities" and others like it are changed, companies who have not contributed to the market collapse will be required to shell out large sums of money as security for increased regulations. This will no doubt drive up operational costs and increase the price of energy.

In the midst of continuing economic turmoil, this bill increases the size of government, expands its reach in the marketplace, jeopardizes the safety and soundness of many of America's financial companies and non-financial companies, and significantly increases the cost of credit for all consumers at a time when consumers can least afford it.

For the above reasons, I am opposed to this bill. I encourage my colleagues to vote no.

## CLIMATEGATE: THE DESTROYED DOCUMENTS

### HON. JOE BARTON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. BARTON of Texas. Madam Speaker, I submit the executive summary document concerning the suppressed comments on the EPA endangerment finding for inclusion in the RECORD. The entire document, 'Comments on Draft Technical Support Document for Endangerment Analysis for Greenhouse Gas Emissions under the Clean Air Act,' will be available on the Energy and Commerce Committee website.

COMMENTS ON DRAFT TECHNICAL SUPPORT DOCUMENT FOR ENDANGERMENT ANALYSIS FOR GREENHOUSE GAS EMISSIONS UNDER THE CLEAN AIR ACT

(By Alan Carlin, NCEE/OPEI)

Based on TSD Draft of March 9, 2009

March 16, 2009

We have become increasingly concerned that EPA has itself paid too little attention to the science of global warming. EPA and others have tended to accept the findings reached by outside groups, particularly the IPCC and the CCSP, as being correct without a careful and critical examination of their conclusions and documentation. If they should be found to be incorrect at a later date, however, and EPA is found not to have made a really careful independent review of them before reaching its decisions on endangerment, it appears likely that it is EPA rather than these other groups that may be blamed for any errors. Restricting the source of inputs into the process to these two sources may make EPA's current task easier but it may come with enormous costs later if they should result in policies that may not be scientifically supportable.

We do not maintain that we or anyone else have all the answers needed to take action now. Some of the conclusions reached in these comments may well be shown to be incorrect by future research. Our conclusions do represent the best science in the sense of most closely corresponding to available observations that we currently know of, however, and are sufficiently at variance with those of the IPCC, CCSP, and the Draft TSD that we believe they support our increasing concern that EPA has not critically reviewed the findings by these other groups.

As discussed in these comments, we believe our concerns and reservations are sufficiently important to warrant a serious review of the science by EPA before any attempt is made to reach conclusions on the subject of endangerment from GHGs. We believe that this review should start immediately and be a continuing effort as long as there is a serious possibility that EPA may be called upon to implement regulations designed to reduce global warming. The science has and undoubtedly will continue to change and EPA must have the capability to keep abreast of these changes if it is to successfully discharge its responsibilities. The Draft TSD suggests to us that we do not yet have that capability or that we have not used what we have.

We would be happy to work with and assist anyone who might want to undertake such a serious review of the science and hope that these comments will at least illustrate the scope of what we believe is needed.

We hope that the reader will excuse the many unintentional errors that are undoubtedly in these comments. Our only excuse is that we had less than four days to draft these very lengthy and complex comments. It has not been possible to fully adhere to our usual very high standards of accuracy as a result. If there should be questions, we will be happy to try to correct any errors that anyone may find, however.

It is of great importance that the Agency recognize the difference between an effort that has consumed tens of billions of dollars by the IPCC, the CCSP, and some additional European, particularly British, funding over a period of at least 15 years with what two EPA staff members have been able to pull together in less than a week. Obviously the number of peer reviewed papers that exist and the polish of the summary reports cannot be compared. What is actually noteworthy about this effort is not the relative apparent scientific shine of the two sides but rather the relative ease with which major holes have been found in the GHG/CO2/AGW argument. In many cases the most important arguments are based not on multi-million dollar research efforts but by simple observation of available data which has surprisingly received so little scrutiny. The best example of this is the MSU satellite data on global temperatures. Simple scrutiny of this data yields what to us are stunning observations. Yet this has received surprisingly little study or at least publicity. In the end it must be emphasized that the issue is not which side has spent the most money or published the most peer-reviewed papers, or been supported by more scientific organizations. The issue is rather whether the GHG/CO2/AGW hypothesis meets the ultimate scientific test—conformance with real world data. What these comments show is that it is this ultimate test that the hypothesis fails; this is why EPA needs to carefully reexamine the science behind global warming before proposing an endangerment finding. This will take more than four days but is the most important thing we can do right now and in the coming weeks and months and possibly even years.

EXECUTIVE SUMMARY

These comments are based on the draft Technical Support Document for Endangerment Analysis for Greenhouse Gas

Emissions under the Clean Air Act (hereafter draft TSD) issued by the Climate Change Division of the Office of Atmospheric Programs on March 9, 2009. Unfortunately, because we were only given a few days to review this lengthy document these comments are of necessity much less comprehensive and polished than they would have been if more time had been allowed. We are prepared, however, to provide added information, more detailed comments on specific points raised, and any assistance in making changes if requested by OAR.

The principal comments are as follows:

As of the best information we currently have, the GHG/CO2 hypothesis as to the cause of global warming, which this Draft TSD supports, is currently an invalid hypothesis from a scientific viewpoint because it fails a number of critical comparisons with available observable data. Any one of these failings should be enough to invalidate the hypothesis; the breadth of these failings leaves no other possible conclusion based on current data. As Feynman (1975) has said failure to conform to real world data makes it necessary from a scientific viewpoint to revise the hypothesis or abandon it (see Section 2.1 for the exact quote). Unfortunately this has not happened in the global warming debate, but needs to if an accurate finding concerning endangerment is to be made. The failings are listed below in decreasing order of importance in our view:

1. Lack of observed upper tropospheric heating in the tropics (see Section 2.9 for a detailed discussion).

2. Lack of observed constant humidity levels, a very important assumption of all the IPCC models, as CO2 levels have risen (see Section 1.7).

3. The most reliable sets of global temperature data we have, using satellite microwave sounding units, show no appreciable temperature increases during the critical period 1978–1997, just when the surface station data show a pronounced rise (see Section 2.4). Satellite data after 1998 is also inconsistent with the GHG/CO2/AGW hypothesis.

4. The models used by the IPCC do not take into account or show the most important ocean oscillations which clearly do affect global temperatures, namely, the Pacific Decadal Oscillation, the Atlantic Multidecadal Oscillation, and the ENSO (Section 2.4). Leaving out any major potential causes for global warming from the analysis results in the likely misattribution of the effects of these oscillations to the GHGs/CO2 and hence is likely to overstate their importance as a cause for climate change.

5. The models and the IPCC ignored the possibility of indirect solar variability (Section 2.5), which if important would again be likely to have the effect of overstating the importance of GHGs/CO2.

6. The models and the IPCC ignored the possibility that there may be other significant natural effects on global temperatures that we do not yet understand (Section 2.4). This possibility invalidates their statements that one must assume anthropogenic sources in order to duplicate the temperature record. The 1998 spike in global temperatures is very difficult to explain in any other way (see Section 2.4).

7. Surface global temperature data may have been hopelessly corrupted by the urban heat island effect and other problems which may explain some portion of the warming that would otherwise be attributed to GHGs/CO2. In fact, the Draft TSD refers almost exclusively in Section 5 to surface rather than satellite data.

The current Draft TSD is based largely on the IPCC AR4 report, which is at best three years out of date in a rapidly changing field. There have been important developments in areas that deserve careful attention in this draft. The list includes the following six which are discussed in Section 1:

Global temperatures have declined—extending the current downtrend to 11 years with a particularly rapid decline in 1907–8; in addition, the PDO went negative in September, 2007 and the AMO in January, 2009, respectively. At the same time atmospheric $CO_2$ levels have continued to increase and $CO_2$ emissions have accelerated.

The consensus on past, present and future Atlantic hurricane behavior has changed. Initially, it tilted towards the idea that anthropogenic global warming is leading to (and will lead to) to more frequent and intense storms. Now the consensus is much more neutral, arguing that future Atlantic tropical cyclones will be little different that those of the past.

The idea that warming temperatures will cause Greenland to rapidly shed its ice has been greatly diminished by new results indicating little evidence for the operation of such processes.

One of the worst economic recessions since World War II has greatly decreased GHG emissions compared to the assumptions made by the IPCC. To the extent that ambient GHG levels are relevant for future global temperatures, these emissions reductions should greatly influence the adverse effects of these emissions on public health and welfare. The current draft TSP does not reflect the changes that have already occurred nor those that are likely to occur in the future as a result of the recession. In fact, the topic is not even discussed to our knowledge.

A new 2009 paper finds that the crucial assumption in the GCM models used by the IPCC concerning strongly positive feedback from water vapor is not supported by empirical evidence and that the feedback is actually negative.

A new 2009 paper by Scafetta and Wilson suggests that the IPCC used faulty solar data in dismissing the direct effect of solar variability on global temperatures. Other research by Scafetta and others suggests that solar variability could account for up to 68% of the increase in Earth's global temperatures.

These six developments alone should greatly influence any assessment of ''vulnerability, risk, and impacts'' of climate change within the U.S., but are not discussed in the Draft TSD to our knowledge. But these are just a few of the new developments since 2006. Therefore, the extensive portions of the EPA's Endangerment TSD which are based upon science from the IPPC AR4 report are no longer appropriate and need to be revised before a TSD is issued for comments.

Not only is some of the science of the TSD out-of-date but there needs to be an explicit, in-depth analysis of the likely causes of global warming in our view. Despite the complexity of the climate system the following conclusions in this regard appear to be well supported by the available data (see Section 2 below):

A. By far the best single explanation for global temperature fluctuations appears to be variations in the PDO/AMO/ENSO. ENSO appears to operate in a 3–5 year cycle. PDO/AMO appear to operate in about a 60–year cycle. This is not really explained in the draft TSD but needs to be, or, at the very least, there needs to be an explanation as to why OAR believes that these evident cycles do not exist or why they are so unimportant as not to receive in-depth analysis.

B. There appears to be a strong association between solar sunspots/irradiance and global temperature fluctuations. It is unclear exactly how this operates, but it may be through indirect solar variability on cloud formation. This topic is not really explored in the Draft TSD but needs to be since otherwise the effects of solar variations may be misattributed to the effects of changes in GHG levels.

C. Changes in GHG concentrations appear to have so little effect that it is difficult to find any effect in the satellite temperature record, which started in 1978.

D. The surface measurements (such as HADCRUT) are more ambiguous than the satellite measurements in that the increasing temperatures shown since the mid–1970s could either be due to the rapid growth of urbanization and the heat island effect or by the increase in GHG levels. However, since no such increase is shown in the satellite record it appears more likely that urbanization and the UHI effect and/or other measurement problems are the most likely cause. If so, the increases may have little to do with GHGs and everything to do with the rapid urbanization during the period. Given the discrepancy between surface temperature records in the 1940–75 and 1998–2008 and the increases in GHG levels during these periods it appears even more unlikely that GHGs have as much of an effect on measured surface temperatures as claimed. These points need to be very carefully and fully discussed in the draft TSD if it is to be scientifically credible.

E. Hence it is not reasonable to conclude that there is any endangerment from changes in GHG levels based on the satellite record, since almost all the fluctuations appear to be due to natural causes and not human-caused pollution as defined by the Clean Air Act. The surface record is more equivocal but needs to be carefully discussed, which would require substantial revision of the Draft TSD.

F. There is a significant possibility that there are some other natural causes of global temperature fluctuations that we do not yet really understand and which may account for the very noticeable 1998 temperature peak which appears on both the satellite and surface temperature records. This possibility needs to be fully explained and 2009 DRAFT discussed in the Draft TSD. Until and unless these and many other inconsistencies referenced in these comments are adequately explained it would appear premature to attribute all or even most of what warming has occurred to changes in GHG/$CO_2$ atmospheric levels.

These inconsistencies between the TSD analysis and scientific observations are so important and sufficiently abstruse that in our view EPA needs to make an independent analysis of the science of global warming rather than adopting the conclusions of the IPCC and CCSP without much more careful and independent EPA staff review than is evidenced by the Draft TSP. Adopting the scientific conclusions of an outside group such as the IPCC or CCSP without thorough review by EPA is not in the EPA tradition anyway, and there seems to be little reason to change the tradition in this case. If their conclusions should be incorrect and EPA acts on them, it is EPA that will be blamed for inadequate research and understanding and reaching a possibly inaccurate determination of endangerment. Given the downward trend in temperatures since 1998 (which some think will continue until about 2030 given the 60 year cycle described in Section 2) there is no particular reason to rush into decisions based on a scientific hypothesis that does not appear to explain much of the available data.

Finally, there is an obvious logical problem posed by steadily increasing U.S. health and welfare measures and the alleged endangerment of health and welfare discussed in this draft TSD during a period of rapid rise in at least $CO_2$ ambient levels.

This discontinuity either needs to be carefully explained in the draft TSD or the conclusions changed.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. DENNIS J. KUCINICH

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. KUCINICH. Madam Chair, I rise today in opposition to H.R. 4173. Although I am supportive of the Consumer Financial Protection Agency as well as other provisions in the bill, ultimately I do not think H.R. 4173 adequately addresses the causes of the financial crisis, and I do not believe the reforms are sufficient to prevent another financial crisis from occurring.

In testimony before the Committee on Financial Services earlier in the year, Dr. Robert Johnson of the Roosevelt Institute stressed that reform of the derivatives markets is absolutely central to fixing the financial system. In fact, he went so far as to say that without strong and comprehensive derivatives reform, any effort to address the problem of systemic risk would be rendered impotent.

H.R. 4173 makes some progress toward regulating derivatives by establishing regulations for clearing and regulating over-the-counter derivatives; however the bill—especially in light of the House's adoption of the Murphy amendment—contains a number of loopholes that sophisticated financial industry insiders will exploit with ease. For example, the Murphy amendment's expansion of the exemption of derivatives users, jeopardizes the integrity of the whole reform. As Dr. Johnson said in his testimony, the challenge is to "[preserve] as much scope for deriving value from derivative instruments for end users without making the definition of end user so broad that it allows large scale financial institutions to effectively continue their unregulated OTC practices and at the same time assures that end users do not themselves, through loopholes, contribute to a weakening of the integrity of the financial system." H.R. 4173 does not accomplish this.

Credit rating agencies were also at the heart of the financial crisis. It was their bogus ratings on opaque securitizations and other financial products that fueled the asset bubble, and it was the fundamental conflict of interest in their "issuer pays" business model that strengthened their position in the industry.

Unfortunately H.R. 4173, rather than address the fundamental conflict of interest in the "issuer pays" model, instead sidesteps the issue and gives the Securities and Exchange Commission more authority to mitigate conflicts of interest. The years leading up to the financial crisis, however, taught us some very important lessons regarding the enforcement authority of the SEC: when officials at the Agency operate with a philosophical disagreement with its mission, it does not matter what tools they have; they simply will not use them. In the interest of long-term, systemic reform, H.R. 4173 should have directly addressed this problem.

As everyone knows, another major cause of the crisis was gargantuan, systemically-interrelated institutions headed by shortsighted executives that scarcely had a notion of their complexity. H.R. 4173 attempts to address "too big to fail" by creating a resolution authority for unwinding and dissolving large institutions that have failed. Simply put, too big to fail is too big to exist. Real financial reform would include prohibiting financial institutions from metastasizing to the point where they threaten the whole system. Real reform would also include limits on interconnectedness and risk. In the words of Nobel laureate Joseph Stiglitz, "Such an approach won't prevent another crisis, but it would make one less likely—and less costly if it did occur."

Yet another cause of the financial crisis was the contagion that spread from the $8 trillion housing bubble that burst. The housing bubble was fueled by predatory and subprime mortgages that were securitized on a massive scale. The manager's amendment included language from H.R. 1728, the Mortgage Reform and Anti-Predatory Lending Act, and I applaud Chairman FRANK for acknowledging the importance of including this legislation. The manager's amendment also included $1 billion for the Neighborhood Stabilization Program to help communities address the problem of abandoned and foreclosed properties. My Domestic Policy Subcommittee did important work on how to target this federal assistance most effectively, I was glad to see its inclusion, and I supported the manager's amendment.

Curiously absent from H.R. 4173, however, is real reform of the process of securitization or any acknowledgement whatsoever that the federal government, through interventions at the Federal Reserve and the Treasury, is the securitization market right now. H.R. 4173 would only require that securitizers retain 5 percent of their assets, called "skin in the game." However, regulators would have the power to raise that amount, but only to 10 percent, and could also eliminate it altogether. This would hardly act as a deterrent to what has become an abused practice. Securitization, done wisely and thoughtfully, is vital to our economy; however by failing to address this issue H.R. 4173 simply allows the abuse of securitization to continue.

There is no reform of the government-sponsored enterprises (GSEs) that subjugated the "public good" aspect of their missions to the demands of their investors for higher profits.

Finally, H.R. 4173 does not fix the problem caused by the conflict of interest in the Federal Reserve's dual mandate. I applaud the efforts of my colleagues RON PAUL and ALAN GRAYSON to include in the bill the authority of the Government Accountability Office to conduct audits of the Federal Reserve, but the financial crisis—and the government's extraordinary response—taught us monetary policy and regulatory policy must be exclusive. Relying on one entity to conduct both activities so vital to a healthy financial system will inevitably give rise to conflicts of interest. This bill, however, further conflates these policies at the Fed by giving the Fed more regulatory authority.

H.R. 4173 cannot be the end of this process, but I fear passage of this bill will preclude further consideration of financial reform. If Congress rests on the laurels of H.R. 4173, we will be back here sooner rather than later to debate the same issues all over again. I look forward to continuing efforts to enact real, comprehensive reform of the financial services industry.

## TRIBUTE TO OFFICER PHILIP DAVIS OF PELHAM, ALABAMA

### HON. SPENCER BACHUS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. BACHUS. Madam Speaker, let us honor of the memory of Officer Philip Davis, the first officer in the history of the Pelham, Alabama Police Department to die in the line of duty.

Officer Davis was performing his sworn duty to protect the public when he was shot and fatally wounded during a traffic stop on I-65 in Shelby County on December 3.

Philip Davis was a four and a half year veteran of the Pelham Police Department. He previously was an officer in Calera and with the University of Alabama Police Department.

Officer Davis was devoted to the law, his community, his faith, and especially his family. He felt that it was his calling to serve and protect others.

Pelham Police Chief Tommy Thomas said, "He was an excellent police officer. He loved his job and we loved him."

Shelby County District Attorney Robbie Owens said, "Philip was a genuinely good, Christian person and dear police officer. We will all miss Philip. He was a good man."

Pelham Mayor Don Murphy said, "This was a very sad day for the City of Pelham and for law enforcement all across our nation. Philip was an asset to both the Police Department and the City of Pelham. His dedication, personality and commitment will be greatly missed. Our thoughts and prayers are with his young family."

Philip Davis was just 33 years old. Our sympathies and prayers are with his wife, Paula, and his two young children, Sarah and John.

In a close-knit community like Pelham, Philip Davis was a friend, neighbor, and role model.

The depth of the community's love for him was clear from the way citizens lined up in cars and along the streets during memorial services that were attended by more than one-thousand fellow law enforcement officials.

All law enforcement officers and their families live with a special burden every day. They know there are risks involved with every call, whether it is serious or seemingly routine. Yet our police officers willingly accept these risks in order to keep our communities safe. That is why our officers deserve nothing less than our highest respect and complete support.

The untimely death of any police officer is a loss not only to the immediate community, but to our nation.

The National Law Enforcement Officers Memorial in Washington, which is not far from the U.S. Capitol, is our national tribute to the sacrifices that courageous members of the law enforcement community have made to keep us secure. The name of Officer Philip Davis

will be added to this memorial so that his legacy is properly remembered and cherished.

No words can adequately make up for the loss of a dedicated officer and devoted husband and father. But as an inscription at the Memorial reads, ''It is not how these officers died that made them heroes; it is how they lived.''

I thank my colleagues for this opportunity to honor to life and service of Officer Philip Davis.

## REMEMBERING THE LIFE OF MR. JOSE LAGOS

### HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor the life of humanitarian and compassionate activist, Mr. Jose Lagos. Mr. Lagos died of cancer on November 30, 2009 at Jackson Memorial Hospital in Miami, Florida at the age of 45. My heartfelt condolences go out to his family and friends at this most difficult time.

Emigrating from his home country of Honduras, Mr. Lagos spent his life working to improve South Florida's immigration policies. He was born on April 11, 1964 in the Honduran capital of Tegucigalpa, where he attended a Catholic high school. In 1985, Mr. Lagos and his family relocated to Miami where he enrolled at Miami-Dade Community College. He went on to earn an Associate's Degree in business administration. In 1990, Mr. Lagos began working on immigration issues as the executive director of an association that helped medical school graduates from other countries obtain their physician's licenses.

Mr. Lagos was a true leader and unifier. South Florida is a mosaic of different immigrant cultures and, unfortunately, many Federal immigration policies have proven to be more divisive than effective. Mr. Lagos worked to overcome these obstacles. As director of the non-profit Unidad Hondurena, Spanish for ''Honduran Unity,'' Mr. Lagos bridged ideological gaps and created powerful synergies throughout the immigration community. He led vigorous grassroots efforts to advance the rights of fellow Hondurans and Hispanics, including protesting fee hikes for temporary work permits and citizenship applications, alerting immigrants to scams, and organizing charities. Mr. Lagos understood the power of unity and also strongly supported efforts to gain Temporary Protected Status, TPS, for Haitians.

One year ago, Mr. Lagos was diagnosed with cancer. Throughout his treatment, however, his spirit never wavered. He continued to speak on behalf of those who came to our country seeking the American dream. This past summer, Mr. Lagos exhibited his dedication and courage outside a church in Little Havana by rallying others to protest the suspension of international aid to Honduras. This is the mark of a true hero, a champion of the people.

Madam Speaker, Mr. Jose Lagos will be remembered in South Florida for his message of unity. He celebrated and embodied our great nation's rich immigrant heritage. The loss of Mr. Lagos is indeed a loss for us all, and for the battle for fair immigration reform.

## OUR UNCONSCIONABLE NATIONAL DEBT

### HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, on December 10, 2009, our national debt was $12,079,739,352,131.13.

On January 6, 2009, the start of the 111th Congress, the national debt was $10,638,425,746,293.80.

This means the national debt has increased by $1,441,313,605,837.33 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year is $1.6 trillion. That means that so far this year, we borrowed and spent an average $4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. PETER A. DeFAZIO

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives market, and for other purposes:

Mr. DEFAZIO. Madam Chair, I rise to express my concerns over the legislation before us. H.R. 4173, The Wall Street Reform and Consumer Protection Act, takes steps to address many of the problems that created our current financial crisis. However, I am alarmed at a number of provisions that weaken the bill.

The creation of a Consumer Financial Protection Agency is long overdue. Consumers need a strong advocate to protect them from the many questionable and confusing financial products offered. However, provisions put in by the banking industry to preempt meaningful state regulation threaten the strong consumer protections we are fighting for. Federal rules promulgated by this agency should set a floor of protection, not a ceiling.

Title III, pertaining to regulation of derivatives, could have been improved by amendments offered that banned certain abusive derivatives from being traded and offered better transparency to the swap market. Unfortunately, those commonsense amendments were defeated. Other amendments that created more loopholes in the derivatives markets were unfortunately included.

I was also disappointed that several amendments I cosponsored were denied an up or down vote. The Inslee/DeFazio/Hinchey ''Too Big to Fail'' amendment set a cap on the size of bank liabilities for financial institutions. Instead of relying on regulators to protect us from financial firms laden with risky investments, this amendment simply breaks up companies with excessive liabilities. The Hinchey/Inslee/Conyers/DeFazio/Tierney amendment would restore key protections from the Glass Steagall Act including the separation of commercial and investment banking.

Furthermore, I opposed the Republican Motion to Recommit because it struck all financial reform from the bill, and would have ended the TARP program at the most inopportune time. I have long opposed the TARP program because it bailed out Wall Street for excessive risk taking at taxpayer expense. Now that Wall Street has been bailed out, the major problem facing Americans is rising unemployment. We should redirect the remaining TARP funds to real job creation on infrastructure because that will get people back to work quickly, rebuild critical infrastructure, and these jobs cannot be exported overseas. Wall Street got its bailout, now it's time to jumpstart American job creation.

I was a strong opponent of financial deregulation legislation in the 1990s. This undermined our financial regulators and gave Wall Street the opportunity to make the risky speculative bets that it lost big on. Reversing this trend is essential; therefore I plan to vote in favor of this legislation to move the process forward. I am eager to see what emerges from the Senate as they continue their debate on financial reform. I am hopeful that this legislation moves us back to responsible regulatory oversight. It is important that we rein in the cowboy capitalism that has too long prevailed in our financial markets.

## EARMARK DECLARATION

### HON. FRANK A. LoBIONDO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. LOBIONDO. Madam Speaker, as per the requirements of the Republican Conference Rules on earmarks, I secured the following earmarks in H.R. 3288.

Requesting Member: Congressman FRANK LOBIONDO (NJ–02)

Bill Number: HR 3288

Account: Air Force, Military Construction, Air National Guard

Legal Name of Requesting Entity: 108th Air Refueling Wing

Address of Requesting Entity: McGuire AFB, NJ

Description of Request: Provide an earmark of $9.7 million for construction of properly sized and adequately configured facilities to house the base engineer administrative, maintenance, and training functions, and readiness (disaster preparedness). Facilities support daily activities associated with maintaining/repairing base infrastructure and facilities for the ARW, and mobility requirements for the 108th Civil Engineering Squadron (CES) and readiness requirements.

## IN HONOR OF JULIUS E. COLES

### HON. GERALD E. CONNOLLY

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. CONNOLLY of Virginia. Madam Speaker, I rise today in honor of a man who, for more than 40 years, has dedicated himself to

the betterment of people from around the world.

Julius E. Coles was born in Atlanta, Georgia, in 1942. He received a B.A. from Morehouse College in 1964 and a Masters of Public Affairs from Princeton University's Woodrow Wilson School of Public and International Affairs in 1966. Mr. Coles then began a long and impressive career with the United States Agency for International Development (USAID).

During his tenure with USAID, Mr. Coles served as a Mission Director in Swaziland and Senegal, as well as serving in other capacities at foreign service posts in Vietnam, Morocco, Liberia, Nepal and Washington, D.C. In recognition of his extraordinary contributions in foreign service, he received the Distinguished Career Service Award in 1995 and the Presidential Meritorious Service Award in 1983, 1984, 1985 and 1986. Mr. Coles retired from USAID in 1994, having achieved the rank of Career Minister.

These achievements alone would have constituted career full of accomplishments deserving of great pride and satisfaction. Yet for Mr. Coles, this was just the beginning of a new and exciting chapter.

From 1994 to 1997, Mr. Coles served as Director of Howard University's Ralph J. Bunche International Affairs Center, and, from 1997 to 2002, he was the Director of Morehouse College's Andrew Young Center for International Affairs.

In 2002, yet another opportunity arose—one that would fully utilize his expertise in foreign service and international affairs and combine that expertise with the ability to reach thousands of people suffering from hunger, HIV/AIDS and poverty. Mr. Coles became the third President of Africare.

Africare was founded in 1970 by two Americans, Dr. William 0. Kirker and his wife, Barbara Kirker. Dr. and Mrs. Kirker had been working in Niger at the Maine-Soroa Hospital since 1966, and in 1970, in the midst of a devastating drought, they established Africare to provide medical services and health care to the people of Niger.

In 1971, Africare reconstituted itself, adding experts in various fields and broadening the mission to support not only health related issues, but development and relief programs in any African country and to serve as a bridge between Africans and Americans, especially Americans of African descent.

Mr. C. Payne Lucas served as the executive director and second president of Africare from 1971–2002, and, under his leadership, Africare became a well-known and highly respected organization. During the years of Mr. Lucas' presidency, Africare provided almost $450 Million through development work including the key project areas of food, water, environment, emergency assistance and rural health initiatives. Mr. Lucas initiated a program to address HIV/AIDS in 1987. In 1998, efforts to better help Africa were categorized into four crucial programmatic focal points: (1) HIV/AIDS; (2) food security, population and the environment; (3) conflict resolution and "good governance"; and (4) computer and Internet technology transfer. Those focus areas have been maintained to the present day.

In 2002, Mr. Coles became President of Africare, promising to build on the legacy of C. Payne Lucas. In just 7 short years, Mr. Coles has taken Africare to a new level. Under his leadership, Africare has received more than $400 Million in new commitments, nearly doubling the total amount of development dollars generated by Africare over its 39 year history combined. Mr. Coles has added the areas of water and sanitation to the key program areas of food security and agriculture, health and HIV/AIDS and emergency and humanitarian response. Mr. Coles has opened new programs across the African continent. There are now more than 25 field offices in Africa along with offices in Paris and Ottawa as well as the Washington, D.C., headquarters.

Mr. Coles has successfully updated management practices and systems resulting in an increase in the productivity and effectiveness of Africare's programs while simultaneously reducing expenses. Today Africare spends 93 percent of every dollar on programs; only 7 percent is spent on administrative and fundraising costs. Africare has earned top ratings from Charity Navigator, The American Institute of Philanthropy and the Better Business Bureau.

Although Africa still faces many challenges and the work is not yet done, much progress has been made. While still pandemic, the HIV/AIDS infection rates have slowed and, in some areas, stabilized. Fifteen percent more Africans have access to safe drinking water over 1990 levels and the infant mortality rate has decreased 40 percent between 1960 and 2000. Programs sponsored by Africare in Microenterprise, Civil-Society Development and Governance, and Women's and Children's issues are leading the way towards a better tomorrow for all Africans.

This progress and the promise for a brighter future would not have been possible without the dedication and determination of Julius Coles and those who went before him at Africare. Mr. Coles could have retired in 1994 and enjoyed the peace and serenity of a man who had led a full professional life and who had contributed so much to humanity. But he chose to answer another calling; he chose to work towards ending the suffering of so many in a continent that is half way around the world. Because he did, thousands of lives have been saved and countless thousands more have been improved. Because he did, Africa and all Africans face a much brighter future

Madam Speaker, I ask that my colleagues join me in expressing our deepest respect and appreciation to Mr. Coles for his decades of service. Julius F. Coles is a true hero who has lived up to the highest standards, fought for the survival of others and has truly made the world a better place. I also ask that my colleagues join me in wishing Mr. Coles continued happiness, success and health in his retirement.

## RECOGNIZING THE COMPASSION AND CONTRIBUTIONS OF MS. DIANA STANLEY

### HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. HASTINGS of Florida. Madam Speaker, I rise today to honor Ms. Diana Stanley and to recognize her contributions in fighting homelessness in South Florida. Ms. Stanley is the Executive Director of The Lord's Place, one of the leading homeless providers in West Palm Beach, Florida. The Lord's Place provides homeless families and individuals with a new beginning.

Beginning as a modest soup kitchen in 1979, The Lord's Place has become a place of transformation for many homeless men, women, and children in Palm Beach County over the last 30 years. In 1983, The Lord's Place expanded its services by opening its first shelter and has since opened two more shelters along with two retail stores and a retail job-training program. In 1997, The Lord's Place began a partnership with Cafe Joshua, another homeless restoration agency, to provide additional and improved services in the community. In April 2000, this collaboration led to the merger of the two organizations. The Lord's Place is dedicated to breaking the cycle of homelessness by providing innovative, compassionate, and effective services to those in need in the community.

Ms. Diana Stanley joined The Lord's Place as Executive Director in April 2007. Under her leadership, The Lord's Place created two campuses: a family campus in West Palm Beach, bringing together the Family Emergency Housing Program with the Family Permanent Program; and a men's campus in Boynton Beach, joining the day program, Operation JumpStart, with the permanent men's housing program, Joshua House.

Furthermore, Ms. Stanley enhanced the agency's internal continuum of care with two new programs. The Engagement Center provides the area homeless and near-homeless with a much needed point-of-entry to services in the community. In the first year of operation, more than 14,000 men, women, and children entered through the Engagement Center doors for a hot meal, peer mentoring, access to the resource center, and case management services in a home-like atmosphere. Additionally, the Recovery Center is an innovative new emergency housing program for single men located on the Boynton Beach property opposite Joshua House. Its innovative programming provides housing and personalized support services designed to address the issues that led to the resident's homelessness.

In 2008, Ms. Stanley was the driving force in creating The Lord's Place's Micro-Enterprise Program, comprised of Cafe Joshua Catering, Maintenance and Beyond, and The Lord's Place's new thrift shop and coffee bar, "One More Time." In 2009, the Cafe Joshua Job Training and Placement Program was born, enhancing Cafe Joshua programming. The program employs an education model that teaches the hard and soft skills necessary for successful employment. It meets the participant where they are in their process of finding a job and teaches them employable skills in a supportive environment.

Madam Speaker, I truly appreciate all the hard work that Ms. Diana Stanley does each and every single day on behalf of the less fortunate in the West Palm Beach community. Ms. Stanley has been an integral part in writing Palm Beach County's 10-Year Plan to End Homelessness. With her assistance, the plan was recently approved by the Palm Beach County Board of Commissioners. I greatly admire her commitment and dedication to helping the homeless get back on their feet as our nation strives to end homelessness.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

### HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under considerations the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. CONYERS. Madam Chair, last fall we witnessed the greatest financial collapse in American history since the Great Depression. As Main Street recovers from Wall Street's excesses, we must reexamine the laws that govern banks and other financial institutions and hold them accountable for their actions. The collapse of our economy shows the need for tough new regulations. Today, the House will vote on H.R. 4173, Wall Street Reform and Consumer Protection Act of 2009, a bill authored by Chairman FRANK that aims to rein in the titans of finance's excesses and protect consumers from unfair and abusive practices.

The bill being considered today creates the Consumer Financial Protection Agency (CFPA) with the sole mission of protecting consumers from financial products and services. Banks, subprime mortgage companies, pay day lenders, and money transmitters will be under the supervision of the CFPA. The new agency will stop unfair, deceptive and abusive consumer financial products and services.

During the last bubble, executives at banks took on more risk because risk was profitable. No one paid much attention to what would happen when the speculation bubble burst. Today's bill will amend this practice by allowing shareholders of public companies to have an annual, nonbinding "say on pay" vote on compensation packages for executives. Federal regulators will be authorized to ban any inappropriate or risky compensation practices that pose a threat to the financial system and to the broader economy.

I am concerned this legislation does not go far enough. Specifically, today's bill will focus on empowering our financial regulators to manage and mitigate some level of "acceptable risk" within the present system, instead of correcting the structural flaws that make a collapse likely to recur. As a result, I am an advocate of a modernized Glass-Steagall act which would mandate that America's banking sectors and investment houses need to remain separate to prevent banks from gambling on the stock market with our savings.

Moreover, I am worried that consumers will not be allowed to address their grievances with financial institutions and banks through the CFPA. Banks rarely directly violate specific federal rules, but the same cannot be said for some of the smaller nonbank lenders, brokers, and other individuals and entities who will be governed by CFPA rules. Violations by smaller actors are less likely to be worth the investment of resources for a federal agency enforcement action, or even one by a state AG, but they can have a devastating impact on individuals nonetheless. Individual remedies are essential to holding all violators accountable and providing incentives for everyone to comply. The Federal Trade Commission received 78,000 complaints against debt collectors last year and took only 3 enforcement actions. Consumers must be able to stand up and defend themselves and hold wrongdoers accountable if CFPA rules are violated. For over 200 years, it has been a fundamental tenet of American law, derived from our Anglo-Saxon heritage, that "for every right, there's a remedy." The concept is commonsense: wrongdoers who violate laws should be accountable to those they injure.

Madam Chair, even with all of the legislation's weak points, the Wall Street Reform and Consumer Protection Act makes great strides to shield Americans from the despotic behavior of Wall Street. I urge my colleagues to support today's bill.

## OUR UNCONSCIONABLE NATIONAL DEBT

### HON. MIKE COFFMAN

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COFFMAN of Colorado. Madam Speaker, today, December 11, 2009, our national debt is $12,092,672,900,402.34. We have increased the national debt $12,933,548,271.21 since just yesterday.

On January 6th, 2009, the start of the 111th Congress, the national debt was $10,638,425,746,293.80.

This means the national debt has increased by $1,454,247,154,108.54 so far this year.

According to the non-partisan Congressional Budget Office, the forecast deficit for this year is $1.6 trillion. That means that so far this year, we borrowed and spent $4.4 billion a day more than we have collected, passing that debt and its interest payments to our children and all future Americans.

## HONORING THE 50TH ANNIVERSARY OF ENSTROM HELICOPTER CORPORATION

### HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. STUPAK. Madam Speaker, I rise to recognize Enstrom Helicopter Corporation of Menominee, Michigan as it celebrates its 50th anniversary in the community. This company designs and produces helicopters that can be found performing a wide range of duties across the globe, while staying true to its hometown roots.

Enstrom Helicopter began with a mining engineer from the Upper Peninsula named Rudy Enstrom. In the 1940's Rudy began building a helicopter and this hobby became a passion. After years of developing and building his own helicopter, Rudy caught the attention of businessmen in the Menominee area and founded R. J. Enstrom Corporation in 1959. The project to replace Rudy's original prototypes with a better engineered product was led by Jack Christensen, Al Belauer and Paul Schultz.

In 1965, Enstrom Helicopter achieved FAA certification on its F–28 model and received certification in 1968 for its more powerful model, the F–28A. Today the company produces three models, the F–28F, the 280FX and the 480B. Enstrom's 280FX and F–28F piston-powered helicopters are the only turbocharged helicopters produced in the world today.

Over the years Enstrom Helicopter has had capable leaders at the helm, including F. Lee Bailey, Bob Tuttle and today's president, Jerry Mullins. These men have guided the continued growth of the company, thanks in large part to their ability to retain a dedicated and experienced workforce.

Having produced approximately 1,200 aircraft, Enstrom helicopters can be found in 45 countries around the world. In fact, 70 percent of Enstrom helicopters are purchased overseas. Recently the company delivered 480B models destined for Ukraine, India, Thailand, and Bulgaria. These helicopters are used for a variety of purposes, including agricultural spraying, search and rescue, cattle herding, law enforcement, and personal transport.

Despite its international popularity, Enstrom Helicopter has remained committed to the Menominee community throughout its history. In turn, the residents of Menominee and surrounding areas have thrown their support behind Enstrom. During its first 10 years as a public company, as many as 10,000 individual shareholders living primarily in the Upper Peninsula and northern Wisconsin invested in the company. This early support from the community was largely responsible for the ultimate success of the company.

Madam Speaker, Enstrom Helicopter Corporation is both a community company and a world leader in helicopter production. Over the years, it has continued to innovate, grow and provide good jobs for the residents of Menominee. I ask, Madam Speaker, that you, and the entire U.S. House of Representatives, join me in recognizing Enstrom Helicopter Corporation, its management, and employees past and present on this golden anniversary of 50 years.

## IN RECOGNITION OF THE AWARDING OF AN HONORARY DEGREE TO MR. JOHN YASHIO KASHIKI

### HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. COSTA. Madam Speaker, I rise today to pay special tribute to Mr. John Yoshio Kashiki of Parlier, California on the occasion of receiving an honorary degree from the University of California, Davis more than six decades after his studies were interrupted by the events of World War II. I ask my colleagues to join me in thanking John for his decades of service to the people of California's Central Valley.

Mr. Kashiki was born in California in 1919 and grew up in the Imperial Valley. John was attending the University of California, Davis when the onset of World War II led to the internment of Japanese-Americans and nationals of Japanese heritage. John Kashiki was one of hundreds of men and women attending the University of California who were forced to leave their studies in 1942 as a result of the executive order.

Mr. Kashiki's experience with internment did not, however, serve to sway his commitment

to his country. John volunteered to serve in the storied 442nd Infantry regiment of the United States Army which was composed of Asian-American soldiers who served with great distinction in Europe. After returning home, John started farming and packing businesses in Parlier, California and remains an active member of the community and an avid fisherman.

Over six decades after enrolling in college, John and the forty-six other students who were forced to abandon their studies at the University of California, Davis, are being recognized by the University with the awarding of the honorary degrees they so richly deserve. John, and fellow class members, will receive their degrees on December 12th, 2009 with friends and family in attendance.

Please join me in congratulating Mr. John Yashio Kashiki on this well-deserved honor and thanking him for his years of service to his community and to his country.

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. OBERSTAR. Madam Chair, I rise in strong support of the Wall Street Reform and Consumer Protection Act. This legislation will protect consumers, end the concept that an institution is ''too big to fail'', and ensure that the American people never again have to be the lifeline for failing Wall Street firms.

The failure of President Bush and a Republican Congress to regulate financial markets and to reign in excessive greed has had devastating consequences for families in northeastern Minnesota and across this country. In short, we have lived through the worst financial crisis since the Great Depression. Irresponsible lending and bets by speculators against the housing market led to a mortgage meltdown that sent the Nation into a deep recession. By the fall of 2008, the failure of major Wall Street firms put in jeopardy our entire economy and threatened jobs in every community. Families watched as the value of their college and retirement investments were decimated. Excessive greed threatened the very livelihood of most Americans.

As families in my district have been facing layoffs, stagnant wages, and reduced hours, the greed of Wall Street has shown no restraint. Last year, the Nation's nine largest banks ran up more than $81 billion in losses, and they accepted tens of billions of dollars in emergency aid from taxpayers. The culture of Wall Street led these institutions to respond with more than $33 billion in bonuses. Where else is such reckless performance so highly rewarded?

Today, the House takes a bold step towards changing the rules of Wall Street. In the e-mails and phone calls that I have received from across Minnesota, my constituents have sent a resounding message. They work hard to earn their pay, to pay their bills, and hopefully, to have a little left over at the end of the month. They play by the rules, and expect others to do the same. This legislation places Wall Street under some of the common-sense rules that people on Main Street live by every day. That means no institution is ''too-big-to-fail'', failure will not earn a taxpayer-funded bailout, speculators will no longer be able to hide behind an unregulated marketplace, shareholders will be given a say on executive compensation, and consumers will be protected from confusing and abusive financial products.

My constituents have asked me to focus on creating jobs. This legislation is part of that effort, and I am pleased to support this necessary reform.

## HONORING RENEE AHLERS FOR RECEIVING THE PRESTIGIOUS FULBRIGHT SCHOLARSHIP

### HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ISRAEL. Madam Speaker, I rise today to acknowledge a young woman in my district, Renee Ahlers.

Ms. Ahlers has been selected to receive a prestigious Fulbright Award. The Fulbright Program is an international exchange program that is sponsored by the U.S. Department of State. Recipients of this award are selected on the basis of academic or professional achievement, as well as demonstrated leadership in their chosen fields. Ms. Ahlers plans to teach English as a Foreign Language in Mexico.

I congratulate her on this accomplishment and applaud her contribution to global education and international relations.

## TRIBUTE TO PIKEVILLE COLLEGE SCHOOL OF OSTEOPATHIC MEDICINE

### HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Mr. ROGERS of Kentucky. Madam Speaker, I rise today to pay tribute to a pioneer in rural medicine and one of U.S. News & World's Report's 2009 top 20 medical schools in the Nation in rural medicine, the Pikeville College School of Osteopathic Medicine.

Founded in 1997, the Pikeville College School of Osteopathic Medicine was established to address the physician shortage in rural Kentucky and Appalachia. Governor Paul Patton, Burlin Coleman, and the founding Dean, the late Dr. John Strosnider's vision was made possible because of the generosity of Attorney G. Chad Perry. Together, their efforts have formed one of the leading rural health medical schools in the Nation.

In less than a decade, more than 500 physicians have graduated from the Pikeville College School of Osteopathic Medicine. Over 150 of these graduates have completed their residencies and are now practicing medicine. Even more impressive, these graduates are keeping the school's mission alive as over 60 graduates have opened offices within a 2-hour drive of Pikeville, Kentucky. Several more are practicing medicine in the rural communities of Western Kentucky and throughout the Appalachian region. These graduates are working with medically underserved populations and advancing rural health care each and every day.

The Pikeville College School of Osteopathic Medicine also holds the honor of ranking fourth in the Nation for percentage of graduates entering primary care residencies. The school emphasizes primary care, encourages research, promotes lifelong scholarly activity, and produces graduates who are committed to serving the health care needs of communities in Eastern Kentucky and Appalachia.

Serving as a model for other medical schools, the Pikeville College School of Osteopathic Medicine continually reaches out to other institutions, hospitals and medical centers around the country, carrying their message of hope for impoverished regions of the county. Their example continues the dream that one day every rural region will have better access to primary care physicians.

Madam Speaker, I ask my colleagues to join me in honoring a shining example of reaching out to those in need, the Pikeville College School of Osteopathic Medicine. I congratulate the school and its board of directors on its prestigious ranking and wish them many more years of success.

## EPA CARBON DIOXIDE REGULATION ENDANGERS AMERICAN JOBS AND ECONOMIC STRENGTH

### HON. VIRGINIA FOXX

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. FOXX. Madam Speaker, earlier this week the EPA declared that carbon dioxide is a danger to public health. As a result government bureaucrats will now have the power to create burdensome new regulations on businesses in almost every sector of our economy. This is an important distinction. Bureaucrats, not elected officials, will be in control of one of the most significant shifts in economic policy in recent memory.

This so-called ''endangerment finding'' is a dramatic step in the wrong direction. If the EPA regulates the emission of carbon dioxide—the same gas emitted by every person in American with each breath—the end result will be job losses and harm to our economy.

But as if this development were not enough to raise serious concerns, yesterday media reports quoted an Obama administration official saying that if Congress doesn't pass a cap and tax law ''the EPA is going to have to regulate in this area. And it is not going to be able to regulate on a market-based way, so it's going to have to regulate in a command-and-control way, which will probably generate even more uncertainty.''

It is unclear whether this is meant as a threat to Congress to ram through the economically harmful cap and tax legislation—which is essentially a national energy tax—or if it is a prediction of the EPA's upcoming

heavy-handed interference in almost every aspect of our economy.

Here's a news flash for the Obama administration: this is America. We are not a command and control economy and the American people will not stand for control by bureaucrats.

Regardless, the bottom line is crystal clear: the EPA's endangerment finding on carbon dioxide endangers the jobs of hard-working Americans and endangers a strong economic recovery.

## PERSONAL EXPLANATION

### HON. KAY GRANGER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 11, 2009*

Ms. GRANGER. Madam Speaker, on rollcall Nos. 941, 944, and 946, I was absent from the House. Had I been present, I would have voted "yes."

## WALL STREET REFORM AND CONSUMER PROTECTION ACT OF 2009

SPEECH OF

### HON. JOHN GARAMENDI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, December 9, 2009*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes:

Mr. GARAMENDI. Madam Chair, I rise today in strong support of this bill.

Listening to this debate, it amazes me how short the memories are of some of my colleagues on the other side of the aisle. Our financial sector collapsed and millions of Americans lost their jobs and their savings because Wall Street knew it could get away with just about anything under the previous administration.

Today, with this vote, I'm proud to say no more. No more to abusive lending practices, no more to loopholes that allow billions of dollars between large firms to go unregulated, no more to a system that prioritizes short term profit in one sector over the long term health of an entire economy.

Under this legislation, consumers will finally have a Federal regulator with teeth ready to battle predatory financial firms. We will stop financial conglomerates from becoming 'too big to fail' and provide legal and financial assistance to homeowners and renters trying to save their homes. For the first time in U.S. history, we will regulate the over-the-counter derivatives marketplace, where millions of contracts between large banks have gone unregulated for years. We are also requiring most private equity and hedge fund advisors to register with the Securities and Exchange Commission and expanding the SEC's staff and antifraud capabilities. We also require full disclosure of financial firms' compensation structures and give shareholders the opportunity to give an advisory vote on executive compensation practices. With millions of Americans unemployed, including tens of thousands in my district, we can't afford further delay on this important package.

For 8 years as California's Insurance Commissioner, I regulated the largest financial industry in America: the insurance companies. The insurance companies had one commandment: thou shalt pay as little as possible as late as possible. Many in finance have their own commandment: thou shalt build up thy house of cards as fast as possible as profitably as possible without consideration of the long term consequences. The games have to stop; it's time we created an economy that focuses on the needs of Main Street, not just Wall Street.

# *Daily Digest*

# Senate

## *Chamber Action*

***Routine Proceedings, pages S12971–S13066***

**Measures Introduced:** Eight bills were introduced, as follows: S. 2872–2879. **Pages S13032–33**

**Measures Reported:**

S. 448, to maintain the free flow of information to the public by providing conditions for the federally compelled disclosure of information by certain persons connected with the news media, with an amendment in the nature of a substitute. **Page S13032**

**Conference Reports:**

**Transportation, Housing and Urban Development, and Related Agencies Appropriations Act—Conference Report:** Senate continued consideration of the conference report to accompany H.R. 3288, making appropriations for the Departments of Transportation, and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010. **Pages S12984–S13031**

During consideration of this measure today, Senate also took the following action:

By 60 yeas to 36 nays (Vote No. 372), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to waive the point of order that the conference report violates Rule XXVIII of the Standing Rules of the Senate. **Page S12992**

A unanimous-consent-time agreement was reached providing for further consideration of the conference report at approximately 9 a.m., on Saturday, December 12, 2009, after any Leader remarks, and that at 9:30 a.m., Senate vote on the motion to invoke cloture on the conference report, with the time until 9:30 a.m., equally divided and controlled between the two Leaders, or their designees; provided, that if cloture is invoked, then post-cloture time continue to run during any recess, adjournment or period of morning business; that on Sunday, December 13, 2009, all post-cloture time be considered expired at 2 p.m., and Senate vote on the adoption of the conference report; provided further, that no points of order be in order during the pendency of the conference report. **Pages S13029, S13061**

**Nominations Received:** Senate received the following nominations:

Marilyn A. Brown, of Georgia, to be a Member of the Board of Directors of the Tennessee Valley Authority for a term expiring May 18, 2012.

William Charles Ostendorff, of Virginia, to be a Member of the Nuclear Regulatory Commission for the remainder of the term expiring June 30, 2011.

Sharon E. Burke, of Maryland, to be Director of Operational Energy Plans and Programs.

16 Air Force nominations in the rank of general.

1 Marine Corps nomination in the rank of general.

1 Navy nomination in the rank of admiral.

Routine lists in the Air Force, Army, Foreign Service, and Marine Corps. **Pages S13064–66**

**Messages from the House:** **Pages S13031–32**

**Measures Referred:** **Page S13032**

**Measures Placed on the Calendar:** **Page S13032**

**Executive Communications:** **Page S13032**

**Additional Cosponsors:** **Pages S13033–34**

**Statements on Introduced Bills/Resolutions:** **Pages S13034–38**

**Amendments Submitted:** **Pages S13038–61**

**Notices of Hearings/Meetings:** **Page S13061**

**Privileges of the Floor:** **Page S13061**

**Record Votes:** One record vote was taken today. (Total—372) **Page S12992**

**Adjournment:** Senate convened at 10 a.m. and adjourned at 7:44 p.m., until 9 a.m. on Saturday, December 12, 2009. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S13061.)

## *Committee Meetings*

*(Committees not listed did not meet)*

No committee meetings were held.

# House of Representatives

## Chamber Action

**Public Bills and Resolutions Introduced:** 18 public bills, H.R. 4283–4300; and 6 resolutions, H.J. Res. 62; H. Con. Res. 221; and H. Res. 965–968 were introduced. **Pages H14826–27**

**Additional Cosponsors:** **Page H14827**

**Reports Filed:** There were no reports filed today.

**Speaker:** Read a letter from the Speaker wherein she appointed Representative Edwards (MD) to act as Speaker Pro Tempore for today. **Page H14745**

**Journal:** The House agreed to the Speaker's approval of the Journal by voice vote. **Pages H14745–46**

**Wall Street Reform and Consumer Protection Act of 2009:** The House passed H.R. 4173, to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, and to regulate the over-the-counter derivatives markets, by a recorded vote of 223 ayes to 202 noes, Roll No. 968. **Pages H14747–H14804**

Rejected the Dent motion to recommit the bill to the Committee on Financial Services, and in addition to the Committees on Agriculture, Energy and Commerce, the Judiciary, Rules, the Budget, Oversight and Government Reform, and Ways and Means, with instructions to report the same back to the House forthwith with an amendment, by a recorded vote of 190 ayes to 232 noes, Roll No. 967. **Pages H14800–04**

Agreed to:

Cohen amendment (No. 15 printed in H. Rept. 111–370) that strikes language that would permit FINRA to regulate investment advisers that are associated with broker dealers; **Pages H14747–48**

Garrett (NJ) amendment (No. 26 printed in H. Rept. 111–370) that allows rating agency firms to deregister as Nationally Recognized Statistical Rating Organizations (NRSRO), provided such NRSRO certifies that it received less than $250 million during its last full fiscal year in compensation for providing credit ratings on securities and money market instruments issued in the U.S.; **Pages H14757–58**

Kilroy amendment (No. 33 printed in H. Rept. 111–370) that makes explicit that financing for the Systemic Dissolution Fund would come exclusively from assessments on industry, without recourse to the American taxpayer; **Pages H14760–61**

Peters amendment (No. 16 printed in H. Rept. 111–370) that authorizes the FDIC to make assessments for the Systemic Dissolution Fund used to repay any shortfalls in Troubled Asset Relief Program (TARP) to ensure that such shortfalls do not add to the deficit or national debt (by a recorded vote of 228 ayes to 198 noes, Roll No. 962); and **Pages H14748–50, H14763–64**

Schakowsky amendment (No. 32 printed in H. Rept. 111–370) that provides the Director of the Consumer Financial Protection Agency with authority to issue regulations for reverse mortgage transactions within one year of enactment. It clarifies the Directors authority to consider additional consumer protections under both consumer protection statutes and HUD regulations (by a recorded vote of 277 ayes to 149 noes, Roll No. 964). **Pages H14758–60, H14798–99**

Rejected:

Kanjorski amendment (No. 18 printed in H. Rept. 111–370) that sought to aim to stem the unintended consequences resulting from the definitional change of NRSRO from "Nationally Recognized Statistical Rating Organization" to "Nationally Registered Statistical Rating Organization." Section 6005 creates inconsistencies in the securities laws as it amends the definition only in the 1933 and 1934 Acts and it has potential impact on state rules and regulations requiring a change of state level statute; **Pages H14751–52**

Kanjorski amendment (No. 12 printed in H. Rept. 111–370) that was debated on December 10th that sought to strike the provisions exempting public companies with less than $75 million in market capitalization from the requirements of the Sarbanes-Oxley Act related to the external audit of internal controls (by a recorded vote of 153 ayes to 271 noes, Roll No. 960); **Page H14762**

McCarthy (CA) amendment (No. 14 printed in H. Rept. 111–370) that was debated on December 10th that sought to strike section 6012 (relating to "Effect of Rule 436(G)"). The amendment would strike increased liability language that would be a barrier to entry, inhibiting increased competition in the rating agency market (by a recorded vote of 166 ayes to 259 noes, Roll No. 961); **Pages H14762–63**

Marshall amendment (No. 19 printed in H. Rept. 111–370) that sought to allow bankruptcy courts to extend repayment periods, reduce excessive interest rates and fees, and adjust the principal balance of the mortgage to a home's fair market value as necessary to prevent foreclosure and revised to allow the VA, FHA, and RHS to take steps to facilitate mortgage modifications. The amendment is substantively identical to title I, subtitle A and sections 121–123 of subtitle B of H.R. 1106 (Helping Families Save

Their Homes Act of 2009), which passed the House on March 5, 2009 (by a recorded vote of 188 ayes to 241 noes, Roll No. 963);

**Pages H14752–57, H14797–98**

Minnick amendment (No. 35 printed in H. Rept. 111–370) that sought to create a Consumer Financial Protection Council (CFPC) of regulators with rule-writing authority in safety and soundness of institutions and consumer protections regarding all financial products. The CFPC is comprised of 12 members including the Secretary of Treasury, Secretary of Housing and Urban Development, the Chairman of the Federal Reserve, the chairman of the CFTC and SEC, among other federal and state regulators (by a recorded vote of 208 ayes to 223 noes, Roll No. 965); and **Pages H14764–76, H14799**

Bachus amendment in the nature of a substitute (No. 36 printed in H. Rept. 111–370), as modified, that sought to provide an alternative bill that establishes a new chapter of the bankruptcy code to resolve certain non-bank financial institutions; create a consumer protection council comprised of existing Federal regulators to revise and promulgate model regulations to enhance consumer protection and improve disclosure; strengthen anti-fraud provisions; regulate over-the-counter derivatives markets; address executive compensation; remove statutory reliance on credit ratings; reform the Government Sponsored Enterprises (Fannie Mae and Freddie Mac); and create a Federal Insurance Office (by a recorded vote of 175 ayes to 251 noes, Roll No. 966).

**Pages H14776–97, H14799–H14800**

Withdrawn:

Watt amendment (No. 17 printed in H. Rept. 111–370) that was offered and subsequently withdrawn that would have revised the exclusion for auto dealers under the Consumer Financial Protection Agency Act by clarifying what auto dealer activities are excepted. **Pages H14750–51**

H. Res. 964, the rule providing for further consideration of the bill, was agreed to on Thursday, December 10th.

**Appointing the day for the convening of the second session of the One Hundredth Eleventh Congress:** The House agreed to H.J. Res. 62, appointing the day for the convening of the second session of the One Hundred Eleventh Congress.

**Page H14805**

**Meeting Hour:** Agreed that when the House adjourns today, it adjourn to meet at 12:30 p.m. on Monday, December 14th for morning hour debate.

**Page H14808**

**Senate Message:** Message received from the Senate today appears on page H14761.

**Quorum Calls—Votes:** Nine recorded votes developed during the proceedings of today and appear on pages H14762, H14762–63, H14763–64, H14797–98, H14798–99, H14799, H14800, H14803–04 and H14804. There were no quorum calls.

**Adjournment:** The House met at 9 a.m. and adjourned at 5:38 p.m.

# *Committee Meetings*

## VOLUNTARY MORTGAGE MODIFICATIONS

*Committee on the Judiciary:* Subcommittee on Commercial and Administrative Law held a hearing on Home Foreclosures: Will Voluntary Mortgage Modification Help Families Save Their Homes? Part II, Testimony was heard from public witnesses.

## BANK OF AMERICA MERRILL LYNCH MERGER

*Committee on Oversight and Government Reform:* and the Subcommittee on Domestic Policy held a joint hearing entitled "Bank of America and Merrill Lynch: How Did a Private Deal Turn Into a Federal Bailout? Part V." Testimony was heard from Sheila C. Bair, Chairman, FDIC; and Robert Khuzami, Director, Division of Enforcement, SEC.

# *Joint Meetings*

No joint committee meetings were held.

## COMMITTEE MEETINGS FOR SATURDAY, DECEMBER 12, 2009

*(Committee meetings are open unless otherwise indicated)*

### Senate

No meetings/hearings scheduled.

### House

No committee meetings are scheduled.

## CONGRESSIONAL PROGRAM AHEAD

### Week of December 14 through December 19, 2009

### Senate Chamber

Senate will resume consideration of H.R. 3590, Service Members Home Ownership Tax Act.

During the balance of the week, Senate may consider any cleared legislative and executive business.

## Senate Committees

*(Committee meetings are open unless otherwise indicated)*

*Committee on Armed Services:* December 16, to hold hearings to examine the assessment by the Joint Estimating Team of the F–35 Joint Strike Fighter Program, 1:30 p.m., SDG–50.

December 17, Full Committee, to hold hearings to examine the nominations of Douglas B. Wilson, of Arizona, to be Assistant Secretary for Public Affairs, Malcolm Ross O'Neill, of Virginia, to be Assistant Secretary of the Army for Acquisition, Logistics and Technology, Mary Sally Matiella, of Arizona, to be Assistant Secretary of the Army for Financial Management and Comptroller, Paul Luis Oostburg Sanz, of Maryland, to be General Counsel of the Department of the Navy, and Jackalyne Pfannenstiel, of California, to be Assistant Secretary of the Navy for Installations and Environment, all of the Department of Defense, and Donald L. Cook, of Washington, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration, Department of Energy, 9:30 a.m., SD–G50.

*Committee on Commerce, Science, and Transportation:* December 15, to hold hearings to examine the nominations of Julie Simone Brill, of Vermont, and Edith Ramirez, of California, both to be a Federal Trade Commissioner, David L. Strickland, of Georgia, to be Administrator of the National Highway Traffic Safety Administration, Department of Transportation, Michael A. Khouri, of Kentucky, to be a Federal Maritime Commissioner, and Nicole Yvette Lamb-Hale, of Michigan, to be Assistant Secretary of Commerce, 2:30 p.m., SR–253.

December 17, Full Committee, business meeting to consider pending calendar business, 10 a.m., SR–253.

December 17, Subcommittee on Consumer Protection, Product Safety, and Insurance, to hold hearings to examine carbon monoxide poisoning, 2:30 p.m., SR–253.

*Committee on Energy and Natural Resources:* December 15, to hold hearings to examine S. 2052, to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out a research and development and demonstration program to reduce manufacturing and construction costs relating to nuclear reactors, and S. 2812, to amend the Energy Policy Act of 2005 to require the Secretary of Energy to carry out programs to develop and demonstrate 2 small modular nuclear reactor designs, 10 a.m., SD–366.

December 16, Full Committee, business meeting to consider pending calendar business, 11:30 a.m., SD–366.

December 17, Subcommittee on Public Lands and Forests, to hold hearings to examine S. 1470, to sustain the economic development and recreational use of National Forest System land and other public land in the State of Montana, to add certain land to the National Wilderness Preservation System, to release certain wilderness study areas, to designate new areas for recreation, S. 1719, to provide for the conveyance of certain parcels of land to the town of Alta, Utah, S. 1787, to reauthorize the Federal Land Transaction Facilitation Act, H.R. 762, to validate final patent number 27–2005–0081, and H.R. 934, to convey certain submerged lands to the Commonwealth of the Northern Mariana Islands in order to give that territory the same benefits in its submerged lands as Guam, the Virgin Islands, and American Samoa have in their submerged lands, 2:30 p.m., SD–366.

*Committee on Foreign Relations:* December 15, Subcommittee on East Asian and Pacific Affairs, to hold hearings to examine reevaluating United States policy in Central Asia, 10 a.m., SD–419.

*Committee on Homeland Security and Governmental Affairs:* December 15, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, to hold hearings to examine efforts to improve management integration at the Department of Homeland Security, 10 a.m., SD–342.

December 16, Full Committee, business meeting to consider S. 1102, to provide benefits to domestic partners of Federal employees, S. 1830, to establish the Chief Conservation Officers Council to improve the energy efficiencies of Federal agencies, S. 2868, to provide increased access to the General Services Administration's Schedules Program by the American Red Cross and State and local governments, H.R. 2711, to amend title 5, United States Code, to provide for the transportation of the dependents, remains, and effects of certain Federal employees who die while performing official duties or as a result of the performance of official duties, S. 2865, to reauthorize the Congressional Award Act (2 U.S.C. 801 et seq.), S. 2872, to reauthorize appropriations for the National Historical Publications and Records Commission through fiscal year 2014, H.R. 1345, to amend title 5, United States Code, to eliminate the discriminatory treatment of the District of Columbia under the provisions of law commonly referred to as the "Hatch Act," H.R. 2877, to designate the facility of the United States Postal Service located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office," H.R. 3667, to designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building," H.R. 3788, to designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building," H.R. 1817, to designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building," H.R. 3072, to designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building," H.R. 3319, to designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building," H.R. 3539, to designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building," H.R. 3767, to designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building," and the nominations of Grayling Grant Williams, of Maryland, to be Director of the Office of Counternarcotics Enforcement, and Elizabeth

M. Harman, of Maryland, to be an Assistant Administrator of the Federal Emergency Management Agency, both of the Department of Homeland Security, 10 a.m., SD–342.

December 16, Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security, to hold hearings to examine tools to combat deficits and waste, focusing on enhanced rescission authority, 2:30 p.m., SD–342.

December 17, Full Committee, to hold hearings to examine prospects for our economic future and proposals to secure it, 10 a.m., SD–342.

December 17, Ad Hoc Subcommittee on Contracting Oversight, to hold hearings to examine an overview of Afghanistan contracts, 2 p.m., SD–342.

*Committee on Indian Affairs:* December 17, business meeting to consider pending calendar business; to be immediately followed by an oversight hearing to examine the Cobell v. Salazar settlement agreement, 2:15 p.m., SD–628.

*Committee on the Judiciary:* December 15, to hold hearings to examine ensuring the effective use of DNA evidence to solve rape cases nationwide, 10 a.m., SD–226.

December 16, Subcommittee on Human Rights and the Law, to hold hearings to examine United States implementation of human rights treaties, 10:30 a.m., SD–226.

December 16, Full Committee, to hold hearings to examine the nominations of James A. Wynn, Jr., of North Carolina, and Albert Diaz, of North Carolina, both to be United States Circuit Judge for the Fourth Circuit, 3 p.m., SD–226.

December 17, Full Committee, business meeting to consider S. 714, to establish the National Criminal Justice Commission, S. 1624, to amend title 11 of the United States Code, to provide protection for medical debt homeowners, to restore bankruptcy protections for individuals experiencing economic distress as caregivers to ill, injured, or disabled family members, and to exempt from means testing debtors whose financial problems were caused by serious medical problems, S. 1765, to amend the Hate Crime Statistics Act to include crimes against the homeless, S. 678, to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, S. 1554, to amend the Juvenile Justice and Delinquency Prevention Act of 1974 to prevent later delinquency and improve the health and well-being of maltreated infants and toddlers through the development of local Court Teams for Maltreated Infants and Toddlers and the creation of a National Court Teams Resource Center to assist such Court Teams, S. 1789, to restore fairness to Federal cocaine sentencing, S. 1376, to restore immunization and sibling age exemptions for children adopted by United States citizens under the Hague Convention on Intercountry Adoption to allow their admission to the United States, and the nominations of Barbara L. McQuade, to be United States Attorney for the Eastern District of Michigan, and Christopher A. Crofts, to be United States Attorney for the District of Wyoming, both of the Department of Justice, 10 a.m., SD–226.

*Committee on Small Business and Entrepreneurship:* December 17, business meeting to consider S. 2826, to amend the Internal Revenue Code of 1986 to extend the renewable production credit for wind and open-loop biomass facilities, and S. 2869, Small Business Job Creation and Access to Capital Act of 2009, Time to be announced, SR–485.

*Select Committee on Intelligence:* December 15, to hold closed hearings to consider certain intelligence matters, 2:30 p.m., SH–219.

December 17, Full Committee, to hold closed hearings to consider certain intelligence matters, 2:30 p.m., SH–219.

## House Committees

*Committee on Appropriations,* December 15, Subcommittee on Defense and the Subcommittee on State, Foreign Operations, and Related Programs, joint hearing on Afghanistan Security Policy, 9:30 a.m., 2359 Rayburn.

*Committee on Armed Services,* December 15, to mark up H. Res. 924, Directing the Secretary of Defense to transmit to the House of Representatives copies of any document, record, memo, correspondence, or other communication of the Department of Defense, or any portion of such communication, that refers or relates to the trail or detention of Khalid Sheikh Mohammed, Walid Muhammad Salih Murarek Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, or Mustafa Ahmed Adam al Hawsawi, 2 p.m., 210 HVC.

December 16, Subcommittee on Terrorism, Unconventional Threats and Capabilities, hearing on understanding cyberspace as a medium for radicalization and counter-radicalization, 1:30 p.m., 210 HVC.

*Committee on Energy and Commerce,* December 15, Subcommittee on Communications, Technology, and the Internet, hearing on the following bills: H.R. 3125, Radio Spectrum Inventory Act; and H.R. 3019, Spectrum Relocation Improvement Act of 2009, 9:30 a.m., 2123 Rayburn.

December 16, Subcommittee on Health, hearing entitled "Innovations in Addressing Childhood Obesity," 10 a.m., 2123 Rayburn.

December 17, Subcommittee on Oversight and Investigations, hearing entitled "Crib Safety: Assessing the Need for Better Oversight," 10 a.m., 2123 Rayburn.

*Committee on Financial Services,* December 15, hearing entitled "Covered Bonds: Prospects for a U.S. Market Going Forward," 10 a.m., 2128 Rayburn.

December 17, Subcommittee on Housing and Community Opportunity, hearing on H.R. 476, "Housing Fairness Act of 2009," 10 a.m., 2128 Rayburn.

*Committee on Foreign Affairs,* December 15, Subcommittee on Europe, hearing on the Lisbon Treaty: Implications for Future Relations Between the European Union and the United States, 2 p.m., 2172 Rayburn.

December 17, Subcommittee on Africa and Global Health, hearing on Elections in Africa: Progress Made, Challenges Remaining, 10 a.m., 2172 Rayburn.

*Committee on Homeland Security,* December 15, Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment, hearing entitled ''Violent Extremism: How Are People Moved from Constitutionally-Protected Thought to Acts of Terrorism?'' 10 a.m., 311 Cannon.

December 16, Subcommittee on Transportation Security and Infrastructure Protection, hearing entitled ''Has the TSA Breach Jeopardized National Security? An Examination of What Happened and Why,'' 2 p.m., 311 Cannon.

December 17, Subcommittee on Management, Investigations, and Oversight, hearing entitled ''Furthering the Mission or Having Fun: Lax Travel Policies Cost DHS Millions,'' 10 a.m., 311 Cannon.

*Committee on the Judiciary,* December 15, Task Force on Judicial Impeachment, to continue consideration of Possible Impeachment of United States District Judge G. Thomas Porteous, Jr., Part IV, 10:30 a.m., 2141 Rayburn.

December 16, full Committee, hearing on Piracy of Live Sports Broadcasting over the Internet, 10 a.m., 2141 Rayburn.

December 16, Subcommittee on Commercial and Administrative Law, hearing on Protecting Employees in Airline Bankruptcies, 2:30 p.m., 2141 Rayburn.

December 16, Subcommittee on Courts and Competition Policy, hearing on H.R. 4115, Open Access to the Courts Act of 2009, 2 p.m., 2237 Rayburn.

December 17, Subcommittee on Crime, Terrorism, and Homeland Security, oversight hearing on Recent Inspector General Reports Concerning the FBI, 10 a.m., 2141 Rayburn.

*Committee on Natural Resources,* December 16, to mark up the following bills: H.R. 725, Indian Arts and Crafts Amendments Act of 2009; H.R. 2288, Endangered Fish Recovery Programs Improvement Act of 2009; H.R. 2476, Ski Area Recreational Opportunity Enhancement Act of 2009; H.R. 3726, Castle Nugent Historic Site Establishment Act of 2009; H.R. 3538, Idaho Wilderness Water Resources Protection Act; and H.R. 2314, Native Hawaiian Government Reorganization Act of 2009, 10 a.m., 1324 Longworth.

*Committee on Oversight and Government Reform,* December 15, Subcommittee on National Security and Foreign Affairs, hearing entitled ''Iran Sanctions: Options, Opportunities, and Consequences,'' 10 a.m., 2154 Rayburn.

December 16 and 17, Subcommittee on Domestic Policy, hearings entitled ''The U.S. Government as Dominant Shareholder: How Should the Taxpayers' Ownership Rights Be Exercised?'' 10 a.m., 2154 Rayburn.

December 16, Subcommittee on Information Policy, Census, and National Archives, hearing entitled ''History Museum or Records Access Agency? Defining and Fulfilling the Mission of the National Archives and Records Administration,'' 2 p.m., 2154 Rayburn.

*Committee on Veterans' Affairs,* December 16, Subcommittee on Oversight and Investigations, hearing on Acquisition Deficiencies at the U.S. Department of Veterans Affairs, 10 a.m., 334 Cannon.

*Committee on Ways and Means,* December 15, Subcommittee on Social Security and the Subcommittee on Economic Development, Public Buildings and Emergency Management of the Committee on Transportation and Infrastructure, joint hearing on Recovery Act Project to Replace the Social Security Administration's National Computer Center, 9:30 a.m., 1100 Longworth.

*Permanent Select Committee on Intelligence,* December 15, to mark up H. Res. 923, Requesting the President to transmit to the House of Representatives all documents in the possession of the President related to the effects on foreign intelligence collection of the transfer of detainees held at Naval Station, Guantanamo Bay, Cuba, into the United States, 10 a.m., 304 HVC.

December 16, Subcommittee on Terrorism, Human Intelligence, Analysis and Counterterrorism, executive, briefing on Hot Spots, 4 p.m., HVC.

December 17, Subcommittee on Intelligence Community Management, executive, briefing on Business Transformation in the Intelligence Community, 4 p.m., 304 HVC.

## Joint Meetings

*Commission on Security and Cooperation in Europe:* December 17, to receive a briefing on Russia's Muslims, 2 p.m., 1539, Longworth Building.

*Next Meeting of the* SENATE

9 a.m., Saturday, December 12

Senate Chamber

**Program for Saturday:** Senate will continue consideration of the conference report to accompany H.R. 3288, Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, and after a period of debate, vote on the motion to invoke cloture on the conference report at 9:30 a.m.

*Next Meeting of the* HOUSE OF REPRESENTATIVES

12:30 p.m., Monday, December 14

House Chamber

**Program for Monday:** To be announced.

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