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Senate

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

PRAYER

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

Let us pray.

Lord of all the world, great and wonderful are Your works, and Your ways are just and true.

Be near to our lawmakers today. Help them to see that their attitudes, words, and actions have consequences that leave this Chamber to influence our Nation and world. Remind them, therefore, to be masters of themselves, that they may be servants to others. Keep them calm in temper, clear in mind, and pure in heart. In these challenging days, strengthen them to perform what You require, even to do justly, to love mercy, and to walk humbly with You.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable TOM UDALL led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 5, 2010.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

Mr. UDALL of New Mexico thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, following leader remarks, the Senate will resume consideration of the Wall Street reform bill.

THE PARTY OF NO

Mr. REID. Mr. President, the manager of the Wall Street reform bill—at least most of it—is the chairman of the Banking Committee, Senator DODD. As I reflect on what we have been through with him in this Congress, it is really incredible. We withstood seven filibusters on housing legislation he was responsible for managing. At the height of the housing crisis, we were trying to deal with seven filibusters. We have worked our way through many different issues he has been front and center on, including health care. He has done this with such remarkable strength. We have had situations he has been thrown into as a result of the death of Senator Kennedy that will be written about in the history books for some time. And then, with no breathing room in store for him, immediately he had to go to this very important piece of legislation dealing with the Wall Street crisis.

We started on this 2 weeks ago tomorrow. We have been stalled ever since. Maybe today there will be a breakthrough and we will be able to legislate. We don't have a lot of time to spend on this bill. We have so much important work to do that has been held up as a result of scores of filibusters conducted by Republicans. An indication of how they treat themselves: we had amendments their Senators offered yesterday that we were willing to accept, and they refused to let us do so. But that is nothing unusual. We have had nominations they have held up for months that get virtually unanimous support after we go through all the time wasted in the cloture process to move forward.

Yesterday, I announced we had a really big day legislatively. I love classic cars. I love to watch them. That is what we accomplished. We voted on a unanimous basis to establish Classic Car Day. That was our accomplishment in this body.

We are waiting around on issues relating to the financial crisis. New Mexico, Nevada, Connecticut—all over the country, States are desperate for us to do something with this legislation so people on Wall Street can't continue to take advantage of the people. We would like to move forward and start legislating. It would seem that after 2 weeks it would be a pretty good thing to do. Basically during that 2-week time, we have accomplished virtually nothing.

I am a little frustrated, but I understand the Republicans have made a decision that they are going to be the party of no. You would think after they established that, that would be good enough for them. I guess they want to underscore and underline it and have a big exclamation mark so no one will ever miss the fact that the Republican Party in this Congress has been the party of no.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

FINANCIAL REGULATORY REFORM

Mr. DODD. Mr. President, I thank the distinguished majority leader. He

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

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has shown remarkable endurance as well as patience over the last 2 years. The health care debate went on for more than a year, considering its beginning, and we finally ended up passing the legislation.

We have a lot of other matters to deal with—obviously, the economic crisis. We are now on the financial reform bill. My hope is—I am not making any procedural requests—based on conversations we had late last evening and again early this morning—and I think Senator SHELBY shares this hope with me, and we are working as we speak here—that we might be able to have a vote on the Boxer amendment sometime around 11, 11:30, and a vote on Senator SHELBY's proposal, on which I will join him, maybe around 12:30. Then we will be able to take up—not to have to vote on them but agree to them unanimously—the Snowe amendments. There is a Hutchison-Tester proposal that I have endorsed as well and that I think all of us believe is a good addition to the bill. My hope is that in the next couple of hours we will move forward and start the process. There are more controversial amendments Members want to raise. They should have the right to do that and have adequate time to debate their ideas.

I know this has been trying for people. People are exhausted. It has been a long Congress. We have taken on some major issues. People are understandably tired, and that situation can lead to the frustration people feel.

I noticed in this morning's headlines that the market declined by 2 percent yesterday, not because of something that happened here but something that happened thousands of miles away in a small country in the Mediterranean—again, an indication of how global our economic situation is, how precarious it is, where events in one part of the world can affect all of us. It is all the more important we try to establish some sound rules for the 21st century. The last time we established in a broad sense any rules for the structure of our financial institutions was almost 100 years ago, coming off the 19th century and the early part of the 20th century. Here we are at the end of the first decade of the 21st century, and, as we painfully learned, we are in desperate need to reform the financial structure of our country, having seen what occurred over the last 2 years—the job losses, the home foreclosure numbers, the decline in home values as well as retirement incomes, the loss of household wealth. We don't need to hear the numbers. We have lived it.

The majority of Americans are still struggling today as we speak. They are anxious for us to respond to the situation with as much thought and care as we possibly can, to see to it that we don't leave our Nation vulnerable once again to the kinds of economic decisions and failures that caused our Nation to come to the brink of a meltdown financially. These are challenging times. I know it is difficult, and there are strong feelings about how to proceed. But that should not serve as a barrier to us doing our job, to making the decisions each of us was elected to perform.

Again, I appreciate immensely the patience of the majority leader and his staff and others and of my colleagues, many of whom have amendments they want to offer to this bill. I want to give them the chance to do that so they can be heard, both Democrats and Republicans. I am particularly grateful to Members who have sought ways to offer amendments we can agree to and accept as part of the legislation. That is a very constructive way to engage in the debate. There are other amendments people believe strongly in that will not be resolvable in the sense of accommodating them, in which case we will have to vote for or against to decide whether to include them in this financial reform package. But that process ought to go forward with civility, with the passion people have for the issue but with the civility to respect each other and the needs of this institution.

This is not the only matter this Congress needs to deal with. I know the majority leader has talked about unemployment benefits. They will still be needed in the coming weeks. We have the tax extenders which are critically important. We may have a Supreme Court nomination coming along. The President has sent up the names of three people to serve on the Federal Reserve Board, which will be very important as well considering the economic implications. We have appropriations bills. This is an important bill, but it isn't the only work the Senate needs to accomplish before we adjourn in the fall. My hope is that people will come, engage in the debate, allow for adequate time to be heard, and then decide to move yes or no on these matters.

Again, I am hopeful that within the next hour or so we will be able to get this process moving where we can actually start casting votes on ideas, particularly the one Senator SHELBY and I will be offering.

I hope that in the minds of most, if not all, the too-big-to-fail proposition is no longer a question on this bill. I don't believe it is, anyway, but there are those who do. To the extent we can satisfy them with additions to the bill that will make that more clear, that is a great step forward. I am confident that can be done in the next hour and a half or so and then move on with the various other amendments people have on the bill.

In the meantime, I urge Members who do have amendments to come over, maybe start talking about their amendments, start educating the offices about what they want to do with their proposals. I have members of our staff here as well to look at the amendments and, where possible, if we can accept the amendment or modify the amendment and make it acceptable to us, certainly I reach out to my Republican colleagues to see how they feel about it, that might even move the process further along. Between now and the votes, this time ought not to be dead time but time people use as well to help us advance the cause of this piece of legislation.

With that, I suggest the absence of a quorum.

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

The assistant legislative clerk proceeded to call the roll.

Mr. 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.

TIMES SQUARE BOMBER

Mr. MCCONNELL. Mr. President, all Americans are relieved that Federal and local law enforcement officials were able to track down and apprehend Faisal Shahzad, the man they believe to have been behind the attempted Times Square bombing. We were especially relieved the bomb never went off. Those who worked around the clock to find and capture Shahzad and extract a confession from him deserve our respect and our gratitude.

Senate Republicans are waiting to hear from the administration to what extent Shahzad had ties to terrorist groups in Pakistan, whether his efforts were part of a wider plot to strike the homeland, whether or not he was on the no-fly list, why he was permitted to board an international flight, and whether intelligence community interrogators have had access to Shahzad.

It has been my consistent view that when a terrorist is captured, members of our intelligence community must be able to interrogate the prisoner in order to extract intelligence. This is true whether the suspect is an American citizen, like Shahzad, or not an American, like the Christmas Day bomber. In this case, it is my hope the administration did all it could to gather all the relevant information it could.

NYC TERROR TRIALS

Attorney General Holder indicated yesterday that the attempted Times Square bombing does not change the administration's thinking on the trial of 9/11 mastermind Khalid Shaikh Mohammed, and that the administration is still considering New York City as a venue for a civilian trial of KSM. The administration only shows that on this issue it does not get it.

That much was clear to anyone who watched yesterday's press conference.

Here was the New York Police Commissioner reminding reporters that no fewer than 11 terrorist plots have been directed at New York City since 9/11 and that, as he put it, nothing has changed with respect to terrorists coming to New York to hurt and kill Americans.

To me, it was jarring, in the face of that kind of cold reality and the repeated pleas of elected officials in New York from both parties, to see the Attorney General still stuck—still stuck—on the notion that holding these trials in downtown Manhattan is anything but a bad idea. Trying KSM in New York City was a bad idea last year. It is a bad idea today. The only thing that has changed is that the American people have just been reminded of how determined terrorists are to carry out their deadly plans.

As I have said repeatedly, Guantanamo is the right place to detain, interrogate, and try terrorists such as KSM. Guantanamo is a safe and secure, state-of-the-art facility where we can detain enemy combatants far from our communities and without fear of onsite retaliation. Some we hold indefinitely. Others we hold until we deem them safe for transfer to another country. Still others we can hold until we try them in military commissions, and we can do that right there at Guantanamo.

Guantanamo was a wise investment. It was built for good reason. Let's use it for the purpose for which it was built, rather than further endangering communities such as New York or burdening them with the disorder and the massive expense that would accompany a terror trial.

It is precisely because of potential dangers and difficulties such as these that we established military commissions in the first place. If we cannot expect the very people who masterminded the 9/11 attacks to fall within the jurisdiction of these military commissions, then who can we?

Americans do not want Guantanamo terrorists brought to the United States, and they do not want the men who planned the 9/11 attacks on America to be tried in civilian courts—risking national security and civic disruption in the process.

(The remarks of Mr. MCCONNELL pertaining to the introduction of S.J. Res. 29 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

RESERVATION OF LEADER TIME

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010

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

The assistant legislative clerk read as follows:

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

Pending:

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

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

Snowe/Shaheen amendment No. 3755 (to amendment No. 3739), to strike section 1071.

Snowe amendment No. 3757 (to amendment No. 3739), to provide for consideration of seasonal income in mortgage loans.

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

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

The assistant legislative clerk proceeded to call the roll.

The ACTING PRESIDENT pro tempore. The Senator from Georgia.

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

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

Mr. CHAMBLISS. Mr. President, what is the current status of the Senate?

The ACTING PRESIDENT pro tempore. The pending business is S. 3217.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to be recognized for up to 10 minutes.

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

Mr. CHAMBLISS. Mr. President, I come to the Senate floor this morning to talk about the current pending business before this body. This is an issue which obviously raised its ugly head a couple of years ago with the financial meltdown that occurred in this country, and I think all of us in this body agree it is imperative the Senate take action to try to make sure what happened to the financial industry in America never has the opportunity to happen again. I commend Senator DODD and Senator SHELBY for their work on this bill. We have had our disagreements. Yet we have had significant agreement on some areas.

We are now trying to take the base bill and make it a bill that all of us in this body, hopefully, will wind up being able to support because we improve the bill to the point where it addresses the real cause of the problem that arose during 2007, 2008, and on into 2009 and 2010.

There are some provisions in the bill that I have particular objection to, and there are some things that are not in the bill that I think should be in the bill. For example, one of the major causes of the problem—and I think it goes without saying—is the fact that the GSEs, Fannie Mae and Freddie Mac, have been authorized over the years to purchase mortgages from individuals who simply could not make their payments, and those mortgages have been bundled together and sold on the market, which has been one of the root causes of the problem. I am not by myself in thinking that. There are other individuals but, more important, people who know a lot more about the root cause of the problem who think that. Everybody in this body agrees that is a major issue that has to be addressed in any overall financial reform. To leave any reference to the GSEs, Freddie Mac and Fannie Mae, out of any additional regulation I think is a mistake. There are going to be amendments with respect to that, and I look forward to that debate.

Another issue is, there are no mortgage standards that are specifically set forth in the underlying bill. I can remember very well going in and buying my first house, making an application for a mortgage. I was as nervous as I could be. Even though my payment was going to be fairly minimal to the amount of money I was making, I had to pay 20 percent down, and it took me a couple of weeks to be approved by individuals in my hometown whom I knew very well. At the end of the day, they just wanted to make sure I was going to be able to pay that loan back. It is not that we need to go all the way in that direction but certainly we need standards in place that will ensure that people who are buying houses can afford to make the mortgage payments for which they are making application.

With respect to the Consumer Financial Protection Act, it appears that in the underlying bill, there is an umbrella that is cast out that is going to require the inclusion of more nonproblem areas of the consumer finance industry than are, in any way, potentially a part of any future financial meltdown.

I hope as we debate these amendments—and I know we will have a spirited debate on them—we can come to some agreement as to what is reasonable. Let's do what we need to do to provide our regulatory agency also with the additional oversight they need to make sure we give them the tools not to allow the situation that occurred in 2007, 2008, and 2009 to recur but that we don't go too far to where we overreach and exercise more control on the part of the regulators than what is absolutely necessary.

I wish to speak for just a minute about the derivatives section and some amendments we are going to have on that particular title. The Agriculture Committee has jurisdiction over swaps and derivatives by virtue of the fact that we have jurisdiction over the Commodity Futures Trading Commission, which in turn has jurisdiction over swaps and derivatives. There are some swaps and derivatives that are secured by securities themselves, and those securities—being regulated by

the SEC—give the SEC some jurisdiction here. That has been part of the discussion and will continue to be as we go through the debate.

There are a couple of things I particularly wish to address which I think are faulty in the base bill and need to be corrected as we go through it. We are going to have a substitute amendment for the derivatives title that will do several things that are of primary importance to the industry that, today, is very unregulated, which will bring all the derivatives trades out of the shadows and into a totally transparent matter and make those trades available to the regulators so they can look not only at the trades themselves, to make sure entities that are entering into those trades are the right kind of entities that ought to be trading and that they are not creating systemically risky industries that will have the potential to create situations similar to what we saw in 2007 and 2008 but also that the agencies—the regulators—will have the ability to call into play additional margin requirements or other tools that they will have to ensure that those entities that are engaging in these practices don't ever reach that point of being systemically risky.

There are some specific provisions we need to look at. One of those is an expansion of what we call the end user provision. An end user is an individual—an entity, whether it is a manufacturing company or it could be an individual but, for the most part, it is a financial entity, usually a manufacturer of some sort that doesn't engage in the finance end of the economy of our country but does seek to hedge its own particular financial issues in the more productive, more conventional financial industry itself. For example, manufacturers such as John Deere or Caterpillar or Ford Motor Company or, for that matter, any manufacturer across the country that seeks to have stability in the marketplace with respect to interest rates because they don't look out 90 days or 120 days, they look at years into the marketplace to ensure that there is stability from an interest rate standpoint so they know how to purchase items, know how to purchase what they need to make their widgets or whatever it may be. Those manufacturers engage in the purchase of derivatives by hedging the interest rate that they are going to pay. They also hedge the purchase of metals. Ford Motor Company, for example, may hedge the purchase of steel in the steel market, so they can ensure themselves of stability in that market.

These are the types of derivatives we are going to be talking about and that we need to make sure—because they were not part of the problem that caused the financial meltdown. But if we are not careful, they are going to be overregulated to the point where the cost of an automobile will be increased, and that is an unintended consequence of this bill, I know. The cost of a John Deere tractor to one of my farmers will be increased. Again, that is an unintended consequence.

I wish to take a minute to read a portion of an unsolicited letter I got from a fairly new bank in Atlanta, which is a community bank that began in 2007. According to the chairman of the board, this bank:

> . . . has built an exceptionally strong balance sheet with superior asset quality, solid and stable deposit funding, and robust capital levels. At quarter end, our equity to assets ratio was 14.39 percent.

He also wrote:

> The Bank received regulatory approval to offer and has been offering interest rate derivatives to our middle market and commercial real estate clients who are concerned about the effects of rising interest rates on their businesses. This affords our clients an opportunity to fix interest rates in what would otherwise be a floating rate environment which could work against them. The Bank will not take interest rate risk on these derivative contracts but instead will hedge all trades with one of our correspondent bank counterparties. In other words, the Bank will operate a matched loan-level hedging program. The Bank does not otherwise engage in any derivatives activities.
>
> There are three key problems from our perspective with the regulation as drafted by the Senate Agriculture Committee [which is part of the base bill that we are debating now]:
>
> 1. The Bank would likely be considered a swap dealer (under section 50(A)(iii) of the proposed regulation) and would have to spin off or terminate its swap activity.
>
> 2. There are no practical end user exemptions for our clients, who would be subject to posting margin against their trades with a clearinghouse.
>
> 3. All swap parties have to be an eligible swap participant, so a real estate single project partnership would not qualify.
>
> It makes no sense that community and regional banks that run matched loan-level hedging programs should be subject to the swap dealer provisions, as such programs are fully hedged and are not taking undue risk.

The letter goes on to say they hope that as we go through this debate, we can fix these unintended practical issues or consequences that provide practical issues in the day-to-day operation of commercial and community banks that are not on Wall Street but are in Atlanta and in Moultrie or other communities around my State and in every other community in America.

Just because a bank is big does not mean that bank is risky. We need to remember, as we think about this, that our regulators need to have the right kinds of tools to look at every single trade that comes up. That is why it is important and why we agree on both sides of the aisle that there needs to be 100 percent transparency in these markets. We are going to provide for that in our substitute.

There needs to be a fixing of the definition in the underlying bill of what is a major swap participant. There again, that goes to the issue of whether you are a big bank, you are automatically systemically risky, which is not the case, but you are automatically covered by this provision. Should Wall Street be covered? Yes. Will they be covered in the base bill? Yes. Will they be covered in our amendment? Yes.

Every swap dealer on Wall Street needs to have not just 100 percent transparency but all their transactions with other financial institutions go through a clearinghouse. That is done in the base bill. That is also provided for in our amendment. We wish to make sure these end users who don't deal in these swaps on a daily basis in the kind of volume the banks do are not thrown into a category of all of a sudden having to pay huge fees and costs added to the cost of doing business. At the end of the day, we know who will pay for that: we consumers who buy the automobiles and the widgets or whatever it may be.

Lastly, I wish to talk about the provision in the bill that requires—it is section 106, the 716 provision. What this provision does is require all swaps dealers and financial institutions to be physically moved out of the financial institution and kind of operate on its own. Here is the practical effect of what that will do. Any Wall Street bank that is a dealer in swaps and derivatives today—and every one of them are—will simply take the swaps desk and move it across the street. Under the base bill, they are going to be required to raise huge amounts of capital for that swaps dealer desk. There is no reason for that to happen. If they are going to raise capital, it ought to be in the bank, where they can utilize it and loan that money out to customers.

The other truly unintended consequence of moving the swaps desk out is the fact that the financial institution itself—again, major banks will be included in this—those individual banks are not going to be able to access the discount window at the Fed because they are all of a sudden not going to be able to borrow money from any Federal entity under the language that is in the underlying bill. That doesn't make sense. The reason it doesn't make sense is that all these swaps and derivatives transactions—whether they are interest rates, metals or whatever the transaction may be—have to be cleared every day. The bank needs a huge amount of cash or the swap dealer needs a huge amount of cash in order to clear those trades.

If they do not have access to the Fed discount window, then they are simply not going to be able to access the amount of cash they need to clear these transactions. The reason they need that cash is to ensure the parties to that transaction are going to, in fact, be able to have the assurance that the other party to the transaction is going to be able to live up to its rights and obligations. If they do not have access to the Fed discount window, then they are not going to be able to access that cash they are going to need to make sure these transactions are, in fact, cashed out at the end of every single day.

We are going to have one amendment that will be a substitute, and then we

will have a series of additional amendments that will be more in the way of rifle shots to address the specific issues I have talked about.

I talked with the chairman of the Banking Committee about these over a period of time. Obviously, I have talked with my friend Senator LINCOLN about this. As we go through this debate, I want to make sure that at the end of the day, we do exactly what all of us want to do and certainly what the chairman and Senator SHELBY set out to do from the start, which is to protect consumers, to protect people who lost a lot of money in the market because of transactions of greed that took place on Wall Street. We can do that in a bipartisan way because we all agree that has to be done.

The thing we want to make sure of is that umbrella or that reaching out to accomplish that particular part of the problem that exists does not look for other problems that do not exist on Main Street and that we have the ability of our community banks, our Main Street banks, as well as our manufacturing sector, to have access to the swaps and derivatives markets that they have done in a commercially responsible way for decades. They are not part of the problem, but yet it is going to be of significant consequence to every manufacturer. Not every community bank engages in swaps and derivative transactions, but a lot of them do. We need to make sure we take into consideration the continued ability of those banks to operate in a normal commercial banking way. Under the base bill, they are simply not going to be able to do that.

Again, I commend the chairman for his hard work. I know he and Senator SHELBY are still trying to work out some agreements on the too-big-to-fail issue. It is my understanding that some of the provisions in the hopeful agreement they are talking about are going to have a direct impact on some of the things I have talked about today. It will make our job a little bit easier trying to fix the derivatives title to this bill.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. BURRIS). The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, before my friend leaves the floor, I wish to thank him for his hard work as the ranking member of the Agriculture Committee, with Senator LINCOLN of Arkansas. I will quickly address a few points my friend has raised.

One I think all of us acknowledge—I certainly acknowledge—is that the GSE issue needs to be addressed. We reached the conclusion that it is such a huge issue, and there are only so many issues we can take on in a bill of this magnitude. Clearly, some language that would allow for some studies to be done or other matters that would help address the issue—I am open to some ideas such as those. To me, for us to try to take on the whole issue of how we reform government-sponsored enterprises—we need to do it. It is clearly an issue that must be addressed. I was concerned about how much we can actually take on in one bill dealing with the entire financial reform structure. I assure my colleague that I am prepared to at least support some ideas to get us moving in the right direction on GSE reform.

On the home mortgage area, underwriting standards, again, we are open to ideas. As the Senator may recall, a year or so ago we fought hard to include underwriting standards. The Federal Reserve has now actually written some. We are trying to get responsibility on both sides of that equation. We had lenders out there pushing a lot of stuff out the door, a sector of our economy—the shadow economy, as it is called—luring people in to take no-document loans, securitizing them and moving them along. And we saw the effects of that. I know there are people working on how we can manage to come up with good language that does not so restrain the ability of a lender to have some flexibility in those standards. Clearly, we want standards in place that everybody has to meet—the lender and the borrower—as we move forward to avoid the kinds of pitfalls that have occurred.

On consumer protection, the last thing we want is asking the dentist, the butcher, so forth—I know people have talked about being subjected to what we are talking about in financial products and financial services. Again, not imposing any new laws at all, but how do we make sure the seven agencies today responsible for those laws can be consolidated in a thoughtful manner?

Lastly, on derivatives, this is an area which is predominantly, although not exclusively, in the purview of the Agriculture Committee. As the Senator points out, when we are talking about futures contracts involving securities, there is clearly SEC involvement, and thus our committee has had some strong interest in the subject matter. Senator JUDD GREGG, as well as Senator JACK REED, has worked on that issue. There is work that needs to be done. We all understand that.

My hope is, on the subject matter which the Senator has explained and talked about—and I appreciate his comments this morning that this is a big and important area—that there be an effort to try to develop a bipartisan approach to all of this as we look at it. It is a complicated area of law. It would be to everyone's advantage if there was communication back and forth to come up with some ideas on which we might be able to achieve some strong bipartisan support. I know he is trying to do that. I encourage him to keep that up as we look ahead so we can end up with good answers. I am very grateful for his interest in the subject matter. I am hopeful this morning that we can move along in the amendment process and do our job. I thank the Senator from Georgia very much.

Mr. CHAMBLISS. I thank my colleague.

Mr. DODD. Mr. President, I see our colleague from Wyoming. If he is ready to go, I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

HEALTH CARE

Mr. BARRASSO. Mr. President, I first thank the chairman for the acknowledgement and thank him for the opportunity to take the floor.

I come here because of new information that has come to light about the health care bill that has been signed into law. As a physician who has practiced medicine in Wyoming for 25 years, as an orthopedic surgeon, I come to offer a second opinion on this bill and now this law. I went into this focused on the sorts of things the President had talked about—lowering the cost of care, improving the quality of care, increasing the access to care. But I come to the Senate floor today with my second opinion because I think these things have not been accomplished by the bill that has been signed into law.

For many years, I have been the medical director of the Wyoming health fairs—giving low-cost blood screening to people around the Cowboy State, giving them opportunities to learn about themselves, their health, and to focus on getting down the cost of care.

Today, when I come with my second opinion, it is that this bill—this bill now signed into law—is going to be bad for patients, bad for providers—the nurses and doctors who take care of these patients—and bad for payers, the people who are going to be paying the bill for this new law, the taxpayers of the country. I believe fundamentally that in passing this law, this is going to result in higher costs for patients, not lower costs. It will result in less access for patients, not more access. This is going to result in unsustainable spending at a time when we are looking at record unemployment and record debt.

I come today to talk about what I have seen in the new information that has been coming forth since the bill was signed into law. I have an editorial written in the Columbus Dispatch:

> Almost daily the ill effects of the health care overhaul passed by Congress are becoming apparent.

The editorial in the Columbus Dispatch goes on:

> As employees and government bureaucrats analyze the law's effects on the bottom line for the private sector and for government, the alarm bells are ringing. The tragedy is that these ill effects could have been and should have been calculated before the law was passed, not after.

It goes on:

> In fact, many of them were prophesied before passage of the bill, but the prophets were ignored by President Barack Obama and the Democratic majority in Congress. That is because their uppermost goal was

not to pass the best health care bill possible but merely to pass anything that could be called health care reform and could be claimed as a political victory by a President desperate for one.

I come today with my second opinion on the high-risk pool which has been in the headlines the last couple of days. When the President and Democratic Members of Congress were pushing the health care bill, they promised that people with preexisting conditions would receive immediate relief. The bill has been signed into law, and Americans with preexisting conditions remain as confused as ever as to how this new law will impact them, will impact their lives and will impact their pocketbooks.

Unfortunately, hundreds of thousands—that is right, hundreds of thousands—of Americans with preexisting conditions are going to end up getting the short end of the stick. In fact, even USA Today recently reported that the new law is going to trap 200,000 Americans in pricey, State-operated, high-risk plans. Here is the front page of USA Today from last Thursday: ''Health law traps some in pricey state plans; 200,000 hard to insure can't get federal option.'' Mr. President, 200,000 Americans trapped. These are the folks who have been paying for coverage through the State high-risk insurance programs that exist today.

One might say: How can that be? What is the catch? These 200,000 people are not eligible for the brandnew, low-cost, high-risk program that is created by the law. Are these not the people we were trying to help? The law requires that for people to get into this new plan, they have to have been without insurance for the last 6 months. We have 200,000 Americans with preexisting conditions who have been playing by the rules, who have been doing what is right. What happens? They are not going to have any access to the benefit the President and the Democrats in this Congress promised would be available to them.

Don't just take my word for it. Here is what the Kansas insurance commissioner had to say. She said that we have people who have struggled to stay in our existing pool and take care of their existing health needs. And then this new pool comes along, and it is more generous and they are not going to be eligible for it.

What is the difference? With the new pool, the maximum amount someone is going to have to pay for an individual is $5,950; for a family, $11,900. That is 100 percent of the standard market rate. But many of these high-risk pools across the country are at a point where they are charging twice the standard market rate because these people are an increased risk because of their preexisting conditions.

The people who have been playing by the rules, doing it right, and, as the insurance commissioner said, people who have struggled to stay in the existing pool, they are going to be left out, ignored, and rejected by this new law the President has signed into law.

This week, all 50 States were given the opportunity to tell the administration whether they wanted to run their brandnew, high-risk pool for individuals with preexisting conditions. The answer has not been positive.

Just yesterday, Tuesday, May 4, the Washington Post said: ''18 states decline to run 'high-risk' insurance pools.'' Eighteen States said to Washington: No, thank you. Eighteen States have refused to participate. Why? Mainly, they do not know, if and when the Federal money runs out, how it is going to be paid for.

One may say: What do you mean, the Fed money runs out? They just passed this health care bill that is going to cost almost $1 trillion. For this high-risk pool, the amount of money that was put in, $5 billion—in the Chief Actuary report of Medicare and Medicaid, they said the money is likely to run out before 2012, even though it is supposed to last until 2014.

What is going to happen to these States? No one knows, and the administration is not saying.

The Governor of Wyoming, Dave Freudenthal, looked at this as a Governor and asked: What do I want to do? Do I want to participate or not? He is one of the Governors who looked at it very carefully, and he is one of the Governors representing the 18 States that said, ''No, thank you,'' to Washington.

This is what he said in his letter to the Secretary of Health and Human Services, Kathleen Sebelius. He said:

> The State of Wyoming has operated a very successful high risk health insurance pool for nearly 20 years, which has served Wyoming citizens well.

And we have. I was involved with this when I was in the State senate, where I served for 5 years. As he said, a very successful, high-risk health insurance pool for nearly 20 years, which has served the citizens of Wyoming very well. Then he goes on to say:

> . . . necessary requirements have not been set out and key terms have not been defined. Without such guidance, I find it unwise to further consume my staff and Department of Insurance with the guesswork currently necessary to implement this program.

Mr. President, these Governors are just guessing—guessing if it will work, guessing if it would not work—and nobody knows. That is why, in an interview with the Associated Press yesterday, the Governor of Wyoming said:

> . . . the $8 million the federal government offered the state to run the high-risk insurance program until 2014 wouldn't be enough. He also said he's concerned the state wouldn't have been allowed to administer the federal pool together with its existing state program.

Sorry, States—this is what the Secretary is saying—we in Washington know better than you. You might have a program that has worked for 20 years very successfully in your home State of Wyoming, but we don't want to know about it. We want you to either set up a new program and do it our way or forget about it. And that is what the people of Wyoming have decided because the Governor said: When I looked at it, it just didn't seem to make financial sense.

So, once again, the administration is saying: Trust us. They want to act now and ask questions later. Well, Americans and Governors across our country have serious questions about this new high-risk insurance program—how much it will cost the States, how much it will cost the taxpayers, and why all American patients with preexisting conditions would not have access to the immediate benefits they were promised.

Unfortunately, Washington's lack of answers clearly demonstrates that this administration doesn't have its act together. The administration has not delivered on the President's promise to help all Americans who have preexisting conditions have access to the same affordable health insurance coverage. That is why all across this country people are saying: This bill, rammed through the Congress, with all the sweetheart deals, and signed into law, wasn't passed for somebody like me. It was passed for somebody else.

So I come to the floor of the Senate today to say it is time to repeal this legislation and replace it with legislation that delivers personal responsibility and opportunities for individual patients, that will get down the cost of care, that will improve the quality, and will improve the access to care. We need patient-centered health care—something that will provide individual incentives, such as premium breaks for people by encouraging healthy behavior; that allows people to take their health insurance with them when they move from State to State or when they change jobs; that gives the uninsured and the self-insured the same relief when they buy insurance that the big companies get; that allows people to buy insurance across State lines; that deals with lawsuit abuse; that allows small businesses to join together to get down the cost of their care. These are the things that will work to get down the cost of care, to deliver high-quality care, and improve access to care. Those things are not in the health care bill that was signed into law. They are not in the health care bill that passed this body and passed the House.

So that is why I come to the Senate floor to once again offer my second opinion that it is time to repeal this bill and replace it—replace it with something that will work well for the American people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. CASEY. Mr. President, I rise this morning to speak about the issue that is before not only the Senate—and, thankfully, we are in the debating process, finally, after many days of discussion about debate—I think this is also an issue that is on the front burner, so to speak, around kitchen tables

or wherever families are gathered or small business owners and others. It is about reforming our financial system and making it more accountable.

I want to back up a second and put this in the perspective of where our economy is. We have an economy which has resulted in a job loss that is a record of one kind or another. We have heard it over and over again: The recession we are living through right now—even though we are recovering—is the worst economic climate we have had since the 1930s. There are lots of ways to measure that, but, of course, the most important data point or number is the unemployment rate and the number of Americans who are out of work—some 15 million.

In Pennsylvania, over 582,000 people are out of work. Our rate is 9 percent. A lot of States would rather a 9-percent rate than 11 or 12 or 13 or 14. But in our State, 9 percent means 582,000 people out of work through no fault of their own. That is the reality with which we are living.

One of the ways to dig out of that hole, so to speak, or get the car out of the ditch—pick your image or analogy—is not only to put in place the job creation strategies which we have put in place over the last year—and even more recently in the last couple of months—but also to reform our financial system to prevent the abuses that took place that led to the problems that so many Americans are experiencing right now.

One of the problems we have had is the fact that we have not just big banks—that was always the case in America; we always had large institutions and small institutions—but we have gone beyond big to what you might call a megacategory—megabanks—that have too much power concentrated in them and too much impact on our system. So what developed was this too-big-to-fail problem. It is a big problem we have to make sure we prevent from happening again, where a bank is such a big institution that it has tentacles reaching far into the economy, and the failure of that one institution or the failure of two or three wrecks the economy for so many others. So one thing we are going to do in this legislation is to make sure that doesn't happen.

So how do we hold Wall Street accountable and how do we put consumers in control at long last? Well, first of all, we have to have strict regulations to stop Wall Street from engaging in reckless activities. We have to stop the reckless gambling that Wall Street was engaged in for far too long. We have to end the taxpayer bailouts forever. That is one thing we have to achieve.

I mentioned the too-big-to-fail problem. We have to end too big to fail as a problem for our system. We have to have a new cop on the beat. This isn't just a question of having a couple of tweaks in regulations, we need tough regulations and tough enforcement. Of course, the analogy we use is one of law enforcement and having a new cop, or a number of cops, on the street—on Wall Street in particular. We have to put consumers in control with information about transactions that are in plain English.

One of the problems we are experiencing now is that we got away from the system we had in place. I am not just speaking of strong regulation and mechanisms to control powerful institutions so they can't wreck our economy because of their reckless behavior and the scheming artistry and the fraud that took place over far too many years, but the basic concept that people in a community knew the bankers and the bankers knew the customers, so to speak. So if you went to get a mortgage for your home, you actually knew who you were dealing with. One side was invested in the other. That worked very well for a long period of time. We have gotten away from that.

I am not saying we can replicate the system we had 30 or 40 or 50 years ago, but we have to borrow some of those concepts where there was more accountability and more sense of investment. We know that 15 years ago—not that long ago—the six largest banks in the United States had assets totaling 17 percent of the gross domestic product. Where are those six megabanks today? They control not the equivalent of 17 percent of GDP, they control 63 percent. It changed from 17 percent to 63 percent in 15 years, virtually unchecked.

So instead of supporting a small business in a community or a Little League team or a family trying to borrow money or a small business, these megabanks gathered deposits from Wall Street. They sliced and diced them, they leveraged them to the hilt, and then used the hard-earned wages and savings of Americans to make a handful—a very small, tiny number—of Americans incredibly wealthy. It is the kind of wealth that is staggering, almost incomprehensible and almost incalculable.

Make no mistake about it, these megabanks profited tremendously from this new model. That is an understatement. Over the last 30 years, profits and compensation in the banking industry have skyrocketed. I don't think wages have skyrocketed. At best, they have been flat for a long time. When they have increased, it has been in very small numbers. So we have megabanks and a flawed system leading to megaprofits for a tiny percentage of the American people, even a small percentage of the business community, so to speak.

American families have been living with this problem. The big guys got us in the ditch, and as we are trying to push the economy out of the ditch, the American taxpayers have had to pay the freight. Well, it is time we made some basic changes, and this legislation gives us this chance. Now is not the time to slow down and delay and wait and scratch our heads. We know it is wrong, we know what the problem is, and we know how to fix it.

This morning, we have the continuation of debate on the bill. We had an example last week where Goldman Sachs came before the Senate, not in a situation where the Senate was a prosecutor or a law enforcement agency, but the Senate played an important role as it relates to Goldman Sachs. Chairman Carl Levin, chairman of the relevant investigative committee—said we were focused on policy and ethics, and I think that is an appropriate role for the Senate.

Now, what happened in that Goldman situation? Well, there are a lot of ways to describe it, but one way to look at it is this way: Goldman sold investors a product—in this case a derivative product—and its value was tied to the performance of a big portfolio of subprime mortgages. That is where it started. But it appears that Goldman worked both sides of the deal. They would sell these products to investors on the one hand, while also plotting with a hedge fund manager who was betting against the performance of the very same mortgages. It gives ''conflict of interest'' new meaning, and it is a disturbing, alarming image for a lot of Americans—selling on one side and then going over to the other side and plotting and scheming to make money, not worrying about what is downwind, what is downstream, the horrific consequences, such as a wrecking ball to a building, and just kind of laughing all the way to the bank.

I know I am in overtime, so I will wrap up. I will be back to talk about an amendment I will be offering, but I do want to say how much I appreciate the work that has been done to date. We are at the beginning of the debate on the Restoring American Financial Stability Act of 2010, which will establish an early warning system; enhance those protections for consumers and investors; strengthen the supervision of large, complex financial organizations; and finally regulate, at long last, in a much more aggressive way, the so-called over-the-counter derivatives market.

I see our chairman of the Banking Committee, Chairman DODD, is here. He has done great work in this area not only more recently but for many years, and we are grateful for his leadership. I know the debate is in the early stages, but I think we are going to have a good product by the end of it.

Mr. President, I yield the floor.

Mr. DODD. If the Senator will yield for 30 seconds—I see my friend from Louisiana. I wish to give him time. But I wish to say to Senator CASEY how much I appreciate his work. We worked together on this committee before I moved on to, I wouldn't say greener pastures, but I was a member of the Banking Committee. I am very grateful to him for his involvement. We

dealt with the housing issues and credit card issues and the like as well. I appreciate his comments very much, and I look forward to working with him, along with my colleague, the Senator from Louisiana, Mr. VITTER, who is a member of the Banking Committee. I thank Senator CASEY.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

LOUISIANA OILSPILL

Mr. VITTER. Mr. President, representing Louisiana in the Senate, along with my colleague, Senator LANDRIEU, you can image I have been focused exclusively on the ongoing oilspill, the leak, the ongoing flow that we and the country are battling. Because it has been almost a week since I have been in Washington and on the Senate floor, I wish to use the opportunity to briefly give an update from my perspective.

Along with many other officials, industry folks, interested citizens, I have been all through and up and down the coast as well as offshore. I had the pleasure of traveling with several Cabinet Secretaries and other Members of our congressional delegation last Friday, going offshore to look at the site of the former rig, the site of the ongoing spill or leak, very closely. I also took another helicopter tour later that day. I have been in all the effected coastal communities, St. Bernard Parish, Plaquemines Parish, which encompasses the mouth of the Mississippi River and beyond, lower Jefferson. I reached out to folks daily—local elected officials and leaders, the industry, Federal agencies, the Coast Guard and others working on this ongoing crisis and the Governor in the State—who were extremely proactively engaged.

Having done that, again, I wish to give a brief report to my colleagues and my fellow citizens. Obviously, I think we need to start in remembering that this is a great human tragedy and that started with the apparent loss of 11 lives. I think it is very important to start all our discussions and recollections about this incident with that human tragedy and with those families. As the media and others cover the environmental danger which is great, the economic impact which is enormous, I think sometimes those families, that enormous human loss is a little glossed over. So I certainly want to stop and reflect on that again and continue to offer my heartfelt thoughts and prayers to those 11 families who were the most impacted, who have suffered the most. I say a prayer for them every day, as do so many folks in Louisiana. We will continue to lift those families.

Second, this is an ongoing challenge and crisis because, as I said a minute ago, this leak, this flow continues. It has not stopped yet. Of course, priority No. 1 of everyone involved is to stop the leak, to stop the flow. It is a little difficult to estimate exactly what that flow is, but the best guesstimate—and it is an art, not a science—is about 5,000 barrels a day.

To put that in perspective, already, as of 4 or 5 days ago, that meant the product leaked surpassed all the spill, all the events combined from Hurricanes Katrina and Rita. That was a big event, so this has already surpassed it 4 or 5 days ago. If that leak rate is constant and continues, 5,000 barrels a day, then in about another 35 days we will equal the volume leaked from the Exxon Valdez. That is a very real threat to equal or surpass that amount of oil. It is a huge event.

There is lots of activity going on at the wellhead in that area to try to control and stop the leak. There are multiple plans. I guess plan A, if you will, is to close off the valves that should have been shut down automatically through the blowout preventer. Needless to say, there was a massive failure in terms of that automatic closedown, which is supposed to happen at multiple levels. But there is ongoing effort to send underwater robots down to the floor of the gulf and shut down those valves. Unfortunately, that has not worked yet.

Plan B is to put out a large, constructed box or dome to cover the part of the gulf floor where the leak is coming from and then to pipe up the material, to vacuum the material in a controlled way from there to the surface and store it. That box or dome has been constructed. It will be sent out to the site in the next 48 hours. So that attempt will start. This technology has been used before in other spills but never in anything similar to this depth of water, 5,000 feet. It has been used in 400 feet, 500 feet, not 5,000. That is a big difference, which brings up all sorts of engineering challenges because of the enormous pressures at that depth of water.

Plan C, if you will, is to drill a relief well—in fact, two relief wells. That work has already begun, to relieve the pressure on this well and to bottle it, to put mud and cement down there to stop the flow from the existing well. That can work and that will work. The problem is that will take 60-plus days, 60 to even 90 days. That work has begun.

In addition to that work to stop the leak in the immediate area of the leak, the Coast Guard and BP and others in the industry are using dispersants and other methods of trying to mitigate the ongoing flow.

That is one category of very important work. There is a second category of extremely important work; that is, all the work that is underway to protect the Louisiana coastline and marshes, as well as similar work in neighboring States: Mississippi, Alabama, and Florida.

I have to say, last Friday, when I took that plane ride with the Cabinet Secretaries, I was extremely concerned that all that coastal protection planning and execution had to go through BP. It was very evident to me that challenge and that end of the endeavor was bigger than BP, and bigger than any single company. I was concerned that was a bottleneck. I was not arguing in any way that BP is the responsible party under Federal law, that BP had enormous monetary responsibility that flowed from that—nobody is arguing with that. But operationally, I didn't want all that crucial coastal protection, marsh protection activity to be stalled or delayed because it had to fit through that bottleneck.

I think the good news from over the weekend is that old system was blown up and that bottleneck was relieved. I particularly wish to compliment and commend ADM Thad Allen, whom the President appointed on Saturday to be the Federal coordinator of this entire effort. I think he recognized, at my urging and that of many others, that having all that coastal planning and execution flow through BP was a problem and a mistake. So that has been corrected.

As of Friday, detailed planning, in terms of coastal and marsh protection efforts, was not getting done by BP. Frankly, it was not getting done by the Federal authorities—the Coast Guard or anyone else. But local and State leaders stepped in, the folks who know that coastline and that marsh area the best stepped in and they have provided those detailed plans over the last several days. So over that time period, in particular from Friday on, individual parishes, in coordination with the State, in coordination with many experts, have developed parish-by-parish plans to protect the coastline and the marsh. That has been a very strong effort; again, pulling together many resources, many levels of leadership, folks who know the coast, the terrain and the marsh like the back of their hands. So that void has been filled, thanks to that leadership and vision by local leaders in strong coordination with Governor Jindal and the State.

Now those individual parish-by-parish plans are ready. They are being tweaked, they are being improved, but they are ready. The next step is for the Coast Guard to formally approve those plans. That has been done on a preliminary basis, the first version of those plans, but most of those plans now have supplements. The Coast Guard needs to quickly and timely approve those supplemental plans. I talked to the Coast Guard leadership yesterday afternoon and urged them to do that in a very time-sensitive way, and they assured me that was happening. Once that happens, BP automatically is on the hook to pay for implementation of those plans. That takes no additional approval or signature from BP. That is automatic under Federal law. Then the plans need to be executed, either through BP or independently by using fishermen in the area, by using other contractors or otherwise. That is a decision of the locals and the State. I think that process is moving in a very good direction and is well underway.

Let me close by focusing on another big category of concern that I share

with so many others; that is, the concern about economic impact starting with the folks who have been hit and affected the most, the fishermen of Louisiana, oystermen, shrimpers, and the fishery industry. Already, as of at least Sunday and Monday, this is having devastating economic impact on those folks. Our hearts go out to them. Our prayers go out to them as well. I have been working with many others to try to get them the help and relief they need, in particular focusing on four categories of activity. First of all, when I talk to local fishermen in Saint Bernard and lower Jefferson and Plaquemines, all through Louisiana, they all say the same thing. They don't want handouts. They don't want a big Federal program. They want a job. They want a paycheck for hard work. That is their lives, that is their tradition, that is their spirit. They just want that to continue. So, first of all, all efforts are being made to hire them, in what is called the Vessels of Opportunity Program, to be the backbone of this coastal and marsh protection response. I have talked to both local and State leaders and BP, and we are all in agreement that a hyperaggressive effort needs to happen to hire as many of those fishermen as possible to man that coastal marsh protection effort.

Second, that is not going to take care of all the immediate need. I am pushing strongly to make sure BP holds to its promises of setting up a hotline and a program of getting quick compensation into the hands of affected families who are suffering economic loss. I talked directly with the CEO of BP yesterday about this. He assured me that was being done. That would mean quick checks to people and families who needed it without any requirement that those folks sign their lives away or cap their claims or sign away future claims. I am going to work very hard to enforce that personal promise. In fact, today, I am setting up a hotline in my office. It will be advertised on my Web site, www.vitter.senate.gov, to ensure that program is developing as promised. If anybody out there, fishermen or others who are applying into that program, is treated differently, I urge them to call this hotline and we will get all over that immediately and try to correct that situation with BP.

Third, in terms of helping that local industry, of course we are looking medium and long term in terms of full economic damages. BP is the responsible party. They are responsible for those economic damages. In addition, we have an OPA trust fund under Federal law which, at present, has a $1.6 billion balance, funded since the Exxon Valdez incident specifically to cover these sorts of direct economic impacts and balances. So I am very focused on that.

Fourth, additionally, there is an outpouring of citizen private support to help these families.

I am not directly involved, but I know several organizations under the umbrella of the United Way are leading fundraising efforts to directly help these families.

But as this ongoing challenge and crisis continues, that will continue to be a prime focus of mine: the families directly impacted, the fishermen, the oystermen, the shrimpers, their families who, after suffering through so much with the Katrina and Rita, were sort of hit below the belt yet again.

I will continue obviously, with Senator LANDRIEU and others, to stay very focused on this ongoing crisis to do all the sort of work I have described. I would ask my colleagues to be sensitive to that and to be aware of that. In particular, there is going to be, and there has to be, enormous discussion about policy, Federal and other policy, coming out of this disaster.

We need to look at mandated technology. We need to look at procedures. We need to look at the current liability cap and the OPA trust fund. All of that is important. But as we begin to do that, my first request would be that we all realize that down in Louisiana off our coast in the gulf, in the real world, there is an ongoing crisis that still continues. The leak is unabated. The flow is unabated.

I would ask all of us to be sensitive to that so we are not diverting attention or resources away from that ongoing crisis. The work needs to be there right now to shut down the flow of oil and to protect our coastline. Many Members, Democrats and Republicans, have offered their support to me and Senator LANDRIEU. We both deeply appreciate that and we look forward to working with everyone in this body on this ongoing situation.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

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

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

PUBLIC SERVICE RECOGNITION WEEK 2010

Mr. KAUFMAN. This week, once again, we celebrate Public Service Recognition Week.

Public Service Recognition Week provides us all a chance to reflect upon the contribution made by those who serve in government.

All throughout the week, the Partnership for Public Service, a leading nonprofit, nonpartisan organization dedicated to honoring those who work in government, will be hosting informative programs across Washington.

One of the most exciting moments during the week is the announcement of this year's finalists for the distinguished Service to America Medals, or ''Sammies.'' This year, once again, the crop of finalists is outstanding, and the winners will be announced at the Partnership's annual Service to America Gala in September.

During last year's Public Service Recognition Week, I delivered the first in a series of weekly speeches from this desk honoring great Federal employees. Now, 1 year later, I am proud to continue this effort today by recognizing my sixtieth great Federal employee, along with a few others who have won Service to America Medals in the past.

Anh Duong has worked for the Naval Surface Warfare Center, in Indian Head, MD, for 27 years. But her relationship with the U.S. Navy goes back farther. She came to this country after escaping Vietnam as a teenager, having fled by helicopter to a Navy vessel offshore. After coming to the United States, Anh obtained a degree in chemical engineering and computer science from the University of Maryland.

After graduation, Anh began working at the Naval Surface Warfare Center as a chemical engineer, and from 1991–1999, she oversaw the Center's advanced development programs in high explosives. From 1999–2002, she worked as the head of its programs to develop undersea weapons.

After the September 11 attacks, when our Armed Forces were given the mission to defeat the Taliban, it was Anh who was asked to develop a thermobaric bomb that could be used to reach deep into Afghanistan's mountain caves, where Taliban fighters were hiding. She and her team were only given 100 days to prepare such a weapon for use. They did it in 67 days.

Since 2006, she has been working with the Naval Criminal Investigative Service to create mobile battlefield forensics labs to help quickly identify those behind terrorist attacks. Anh Duong was awarded the Service to America Medal for National Security in 2007.

Another dedicated Federal employee, who won the Service to America National Security medal in 2005, is Alan Estevez. Alan is the Principle Deputy Assistant Secretary of Defense for Logistics and Military Readiness.

The old adage says that ''an army runs on its stomach.'' In fact, a modern military runs on much more than that. There are thousands of pieces of equipment and supplies that need to be transported in and out of an area of operations. Alan has been working since 1981 to make our military logistics system more efficient.

Over the past several years, Alan has overseen efforts to implement radio frequency identification, or ''RFID'' technology into our military supply chain. He saw that companies like Wal-Mart were using RFID to track products with a high degree of accuracy and to reduce waste.

Alan's work over the past three decades has saved the military, and the taxpayers, countless dollars and has helped ensure that our troops have the supplies they need to fulfill their missions.

Another Service to America medalist I want to highlight today is Riaz Awan. He served as the Energy Department's attaché in the Ukraine when he won a Sammie for his work to secure the site of the 1986 Chernobyl meltdown.

Riaz won the 2003 Service to America Medal for International Affairs, which recognized the several years he spent living near the site of the Chernobyl disaster and working with the local communities to mitigate its social and economic impact. As part of his work, Riaz oversaw the construction of a new concrete shelter over the former Chernobyl reactor, one of the largest and most complex engineering projects in the world at the time.

Additionally, his work on nonproliferation in the Ukraine has helped prevent terrorists from getting their hands on nuclear materials leftover from the fall of the Soviet Union.

In the same year that Riaz won his award, the Service to America Medal for Call to Service, which recognizes new Federal employees, was won by Alyson McFarland of the State Department.

Alyson had only worked at the State Department for 3 years when she found herself in the middle of a tense diplomatic situation. She was working as a program development officer at our consulate in the northern Chinese city of Shenyang, near the North Korean border. One summer day, in 2002, three North Korean refugees jumped over the consulate wall, seeking asylum.

Alyson was one of the only Korean-speakers working in the consulate, and she quickly became instrumental in communicating with the refugees and authorities from the Chinese and South Korean governments. By playing a key role in supporting the negotiations with the refugees and government officials, she helped enable the asylum-seekers to reach freedom in South Korea. At the time of the incident, she was only 28 years old.

The fifth and final story I want to share today is about the winner of the 2002 Service to America Medal for Justice and Law Enforcement. Special Agent Robert Rutherford won it for his work at the U.S. Customs Service, which has since been renamed as U.S. Customs and Border Protection.

Robert served as the Group Supervisor for the Customs Service's Air-Marine Investigations Group in Miami, and his primary job was to keep illegal drugs from reaching American shores.

Starting in 1999, Robert began noticing a sharp rise in the amount of cocaine and other narcotics being smuggled into the country from Haiti, which was contributing to a rise in local crime.

On his own initiative, Robert worked with his colleagues to form Operation River Sweep to block the Miami River as a trafficking route for drugs. As part of the operation, he led a first-of-its-kind intra-agency task force under the direction of the Customs Service. Between 1999 and 2001, Operation River Sweep made over 120 arrests and prevented over 13,000 pounds of cocaine from reaching Florida communities.

As Robert's efforts met with success, the local crime rate dropped. In order to stay afloat, the drug traffickers adapted their methods, hoping to outsmart the Customs Service.

However, in 2001, Robert launched a second task force, Operation River Walk, involving over 300 law enforcement personnel from local, State, and Federal agencies. This second task force arrested over 230 trafficking suspects and seized over 15,000 pounds of cocaine and cannabis.

Though the details are different in each case, all five of these stories about Service to America winners send the same message. It is a message of service above self, of motivation to carry out the people's work.

When I first spoke about Federal employees a year ago, I noted the importance of the oath taken by all those who serve in Federal Government. The spirit of that oath, to ''support and defend the Constitution'' and ''faithfully discharge the duties of the office,'' undergirds the service of every man and woman who has worked as a Federal employee since 1789.

Our work in Congress today is the drafting of a blueprint for recovery, security, and prosperity. The task of building and maintaining these edifices we design will belong to the dedicated and industrious civil servants upon whom all Americans daily rely.

They are the regulators who will restore stability to our financial system.

They are the lawyers who will prosecute terrorists detained overseas.

They are the doctors and nurses who will care for our returning veterans.

They are the aid workers who spread hope and healing around the world.

They are the instruments by which we, the people, secure the ''blessings of liberty.''

As we mark Public Service Recognition Week, let us all make an effort to thank those who have chosen the path of public service. They are all truly great Federal employees.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. ENSIGN. Mr. President, the American people are tired. They are tired of the government spending money that it does not have while they are forced to make tough decisions about their own family's budgets.

But more importantly, the American people are tired of the government stepping in, blank check in hand, to bail out giant Wall Street firms that were irresponsible with their money. The American people are sick and tired of seeing their hard-earned taxpayer dollars squandered in the name of too big to fail.

One of the most important lessons that we learned from this financial crisis, hopefully we learned, is that the bailouts were unfair. They allowed the government to manipulate the market by picking winners and losers, and they used taxpayer dollars to do so.

Republicans have made this point repeatedly during this debate. Those on the other side of the aisle have accused us of trying to hold up reform. But what we have been trying to do is to listen to the American people when they demand no more bailouts.

This bill does not address the concerns of the American people. Despite the enormous size of this bill, and its complexity—and believe me, it is truly complex—I do not believe anybody in this Chamber—as a matter of fact, I do not believe anybody on Capitol Hill fully understands this bill.

This bill makes more explicit the ability of the government to continue to pick winners and losers when bailing out irresponsible Wall Street firms. I come from a State where gambling is a big part of our economy. Yet a Las Vegas casino could not get away with half of the gambling that Wall Street does. When people walk into a casino to gamble, they do so knowing that the odds are against them.

But Wall Street takes gambling to a whole new level. They do it because they actually manipulate the odds while someone is playing the game. What is more, Wall Street then asks the government to cover their bets when they can no longer afford to do so on their own.

Can you imagine a casino booking a bad bet and losing money, and then asking the government to bail them out? That is basically what Wall Street did. And this bill continues that ability.

The proof of this is self-evident because we are now debating an amendment that tries to fix that, the Boxer amendment. If this bill did what it claimed to do, we wouldn't be here debating this amendment which, although this amendment sounds very nice, it actually does very little to address the problem of preventing future bailouts. This bill still creates a new government bureaucracy for the purpose of managing bailed-out banks and their creditors. The language of this amendment does nothing to prevent taxpayer money from being used to pay off debts of failed financial institutions. For example, billions of dollars in taxpayer money were used to pay AIG's obligations to Goldman Sachs after the insurance giant collapsed. This amendment does nothing to stop the Federal Reserve from risking even more taxpayer money on these firms in the future. The language of this amendment does not even prevent the government from imposing fees on companies that can be spent to bail out firms.

I regret this flawed bill is on the floor now instead of a bipartisan piece of legislation the American people have been asking for and, quite frankly, deserve. I hope in the process of debate, we can offer amendments that will fix this legislation, that will finally end this too-big-to-fail concept. Instead, the American people are left dealing with the reality that another partisan bill has come to the floor and will probably become law. Another government bureaucracy will be created as a result of this legislation with little regard to the will of the people.

Here we go again. Unfortunately, too much partisanship has gone on in this body. There are several of us working on bipartisan amendments. I hope we can dramatically improve this bill. Both sides have the same objectives. We want to clean up Wall Street. We don't want to do that while hurting Main Street. We want to hold Wall Street accountable, but we don't want to do it in a way that harms people who had nothing to do with the financial crisis.

I hope we actually can end up with a system that ends too big to fail. We already have several financial institutions that are already too big to fail. What to do about those firms is very difficult, very complex, and we have to do it in a way that doesn't mess up our entire financial system and system of credit. I believe we need to take our time, because the expertise to get this right is difficult to get. I don't believe necessarily the Senate or the House has that kind of expertise. We need to take our time on this bill to get it right, to make sure we are doing what we are intending to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I don't know if there has ever been a perfect law. Maybe the law that was written on stone tablets and brought down the mountain by Senator Moses was a perfect law. Ever since then, human beings have tried to write laws that are good and acknowledge that they are human. Maybe the laws will have to be revisited and changed and revised. That humility comes with this job, because you understand this is an imperfect process. We debate, try to reach compromises and make concessions. Virtually every time at the end, you say: That isn't what I would have written, but that is what the Senate decided to move forward with.

Now we are in the midst of debating this law, 1,407 pages long, called the Financial Stability Act. Why are we doing a bill that looks like a telephone directory? We are doing it because of the recession, a recession which, frankly, hit America harder than anything since the Great Depression. Seventeen trillion dollars was taken out of the American economy. That is more than the value of all the goods and services produced in the United States in 1 year; $17 trillion yanked out of the economy, and most of us felt it. You felt it in your savings account, your 401(k). You saw it when the shop down the street laid somebody off or closed.

We know this is a real recession that hit America hard, 8 million people unemployed, 6 million people sitting out there frustrated, not even looking for jobs. That is a real recession. How did we reach that? We reached that because of some very bad decisions in Washington and on Wall Street. The decisions in Washington related to the future of housing. Are we going to expand the opportunity to own homes to people who traditionally did not own them? We thought it was a good idea.

I can remember when my wife and I bought our first home. Our lives changed. We were no longer renters. We were interested in that house and in our block and our neighborhood, our parish, and our community. It is a different look at life. Home ownership is a real American value. We also thought it was a pretty good investment. Stretch to make a house payment. Can we make it? Do you think we can make that monthly payment? If you can, you watch the value of that housing go up and say: Pretty good decision. Nice little house for the family and a good investment.

So we thought in Washington, let's expand that model. There is nothing wrong with where we started. There was nothing selfish about it or outlandish that we would move in that direction. Then came Wall Street. Wall Street said: If this is a good thing, we can make money on it. They took the mortgages people used to enter into with the bank down the street or downtown and sold the mortgages downtown to some other bank. Pretty soon that mortgage went into the business atmosphere and was chopped up in pieces, sliced and diced into securities and derivatives, traded and sold at the highest levels of Wall Street. Unfortunately, it got out of hand. It got so far out of hand that at the end of the day, it collapsed. Home values started coming down; defaults and foreclosures started increasing. People making all the money on Wall Street were sitting in financial institutions that were crumbling around them.

So where did they turn for help? They turned to taxpayers. They asked taxpayers: Bail us out. Come to our rescue. Keep our company in business even though we made some fundamental mistakes.

And we did. There is a good argument as to whether we should have. But I can tell you, having sat in the room where the Secretary of the Treasury and the Chairman of the Federal Reserve said, Senators and Congressmen, if you don't move fast, the American economy is going to collapse, what do you do? I have an education and some experience, but I am not sure I am ready to save the American economy singlehandedly. I took their advice, as did others in bipartisan votes that led to the bailout that saved these institutions.

They showed their gratitude to American taxpayers for saving them from their own malfeasance by declaring bonuses for one another, million dollar checks they gave to one another in congratulations for their economic failure. Naturally, Members of Congress and the American public said: It is disgusting that these people would make these mistakes. Ask the average mom-and-pop family to bail them out with their tax dollars and then give one another bonus checks to reward their misconduct.

That is what brought us here today. That is what this bill is about. This bill is about changing financial institutions to guarantee there will never be another taxpayer bailout, period. Senator BARBARA BOXER of California has the first amendment. It is a critically important amendment. It ought to have every vote in this Chamber. It says: No more taxpayer bailouts, period. That is a good starting point.

But then let's proceed from there. What are we going to do about these institutions to make sure they are held accountable, that they don't get so big their failure jeopardizes the American economy? That is part of this as well, the amount of money they have to keep on hand, the leverage, the liquidity, how they can loan this money, rules of the road to make sure we never get into this recession mess again.

There is another provision in here too, one that I think is equally important. It says we are finally going to create one agency of government that is going to look out for families and businesses across America who can be duped into legal agreements that can explode on them at the expense of their life's savings or their home. It is a consumer financial protection law, the strongest one ever passed in the history of the country.

I heard the Senator from Nevada call it a massive bureaucracy. It is not that. In fact, it is a self-enforcing agency that has the power to make decisions independently of existing agencies of government with one goal in mind: Empower consumers across America to make the right choices. We can't make the final decision about whether you sign that mortgage paper. We shouldn't. But you ought to know when you sign it what you are getting into. What is the interest rate? What is the term of this mortgage? Can I prepay this mortgage without penalty? Those are basic questions people need to be asked and answered. That is what this bill is going to guarantee through the Consumer Financial Protection Agency.

It took a long time to get to the point today where we will have our first vote on this bill. It took much longer than it should have. Senator CHRIS DODD of Connecticut, who is chairman of the Banking Committee, sat down with Republicans, Senator SHELBY of Alabama, over 3 months ago and said: Let's work together. Let's make this a bipartisan bill. After 2 months of effort, they concluded they couldn't reach agreement. At that point Senator DODD said: I will reach out to Senator CORKER of Tennessee, a Republican, and see if I can reach agreement with him for a bipartisan bill. He is on my committee.

They worked for a month. They could not reach agreement. So Senator DODD said: There comes a point where we have to move this legislation. He called this bill before his Senate Banking Committee and invited Republicans and Democrats on the committee to

give their best ideas. How would they change this, improve it? What would you do to this bill?

Republicans filed over 400 amendments to this bill. That is a lot of work. Then came the day of the actual hearing on the bill. The decision was made on the other side of the aisle not to offer one single amendment, not one. Twenty minutes after it convened, it voted to pass the bill out and adjourned.

So when Senators from the Republican side of the aisle come in and say: There is not enough bipartisanship in this bill, I have to tell you, it isn't because of a lack of effort by Senator DODD and members of the Banking Committee. We have tried to engage our friends on the other side of the aisle to help us make this a better bill. We still offer that invitation. There will be bipartisan amendments. There should be bipartisan amendments. But at the end of the day, if we don't make a fundamental change in the economy and the way we manage financial institutions, we will invite another breakdown, and we can't let that happen. There have been too many victims of this recession to let that happen.

President Obama has challenged us to get this done. We do so little around here. It is frustrating. We spent a whole week a few weeks ago, 1 whole week, debating whether we would extend unemployment benefits for 4 weeks. One week of debate, four weeks of extension. The following week we spent an entire week on the Senate floor debating five nominees the President had sent to us out of the 100 sitting on the calendar. All of these nominees were noncontroversial, passed with strong votes. We ate up an entire week on these nominees.

Then we wasted last week when the Republicans mounted a filibuster to try to stop debate on this bill. Three straight votes, Monday, Tuesday, and Wednesday of last week in favor of a filibuster. And finally, thank goodness, several Republican Senators went to their leadership and said: This is a bad idea. We ought to be on the right side of history for Wall Street reform, and we are not going along anymore with the filibuster. At which point it ended, and we started moving to the bill.

Today we may take up the first amendment. I hope we do. There are a lot of things that need to be included in this. Let me tell you one thing I will offer an amendment on which most Americans are not aware of. If you have a credit card and you go to a local business, whether it is a restaurant or a flower shop or to get your oil changed, and you present your credit card to pay for the service or the goods you are buying, you are not only going to pay the shopkeeper, the shopkeeper is going to owe the bank that issued the credit card a percent of what you paid. It is called an interchange fee. It turns out to be a substantial amount of money for retailers. They end up paying these credit card companies a percentage of the bill for the use of the credit card. There is nothing wrong with that. There should be a fee associated with the use of credit cards by businesses. But it has reached a point of unreasonableness. It has reached a point of unfairness. Let me give an example.

If I go to a restaurant in Chicago and pay for my dinner with a check, the restaurant turns the check in to the bank. The bank contacts my bank, the money transfers. There is no fee, no cost. However, if I go to the same restaurant and use a debit card, which takes the money directly out of my bank account just like a check, the company that issued the debit card and credit card will charge a percentage of that restaurant check to the owner of the restaurant. That money is coming directly out of my checking account just as a check is.

Why is the credit card company taking as much in a fee from a restaurant as they do with a credit card, where there is at least some question as to whether ultimate payment will be made?

So we are going to have an amendment which addresses the interchange fee and tries to bring some fairness to it. I think it is long overdue. I hope all of the Members of the Senate who believe in small businesses will call them and ask them about the Durbin amendment on interchange fees. You will find, as I have, this is one of the major concerns of retailers and businesses across the United States.

I talked to a CEO of a major drugstore chain yesterday, and he told me his top four expenses for his nationwide chain of drug stores: No. 1, salaries; No. 2, what he called mortgages and rent; No. 3, health care, No. 4, interchange fees—the amount of money his chain pays to credit card companies. It is a huge expense of small business.

We are not saying there should not be an interchange fee. We are saying it should be reasonable, and if it does not involve effort, service, or liability on the part of the credit card company—such as the debit card—it ought to be reflected in the fee that is charged.

The last amendment I submitted is one I think taxpayers across the country ought to pay attention to. More and more each year, the Federal Government is accepting payment by credit card. You can pay for your income tax with a credit card. What does that men? It means Uncle Sam—the taxpayers—pays an interchange fee to the credit card companies, even though, ultimately, those credit card companies are all being paid.

So in my estimation, it calls for an amendment which says the lowest interchange fee rate should be charged to the Federal Government, so the taxpayers are not subsidizing credit card companies, which they are currently doing with interchange fees that do not reflect the liability involved in the transaction.

This is just one of the aspects of the bill. Some will say: Well, what does that have to do with the recession? I can tell you, consumer debt and personal debt had a lot to do with the recession. A lot of people, in desperation, turned to their credit cards. A lot of people found the interest rates on their credit cards going through the roof, and a lot of people did not understand why they were so expensive.

We are going to bring this out for debate. Once again, I hope my colleagues who support small businesses, as I do, and believe they are a lifeline to bring us out of this recession will join me in supporting small businesses to make sure we bring some sense to the interchange fees charged on credit cards and debit cards across America.

Mr. President, I yield the floor.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I just spoke with Senator SHELBY on the phone. We have been working to reach agreement on the so-called too-big-to-fail sections of the bill. I spoke with him, and while he will be coming over shortly and we will have a vote on this early this afternoon, the leaders have to set the time, I presume, that after the respective lunches we will be able to vote on this and the Boxer amendment. I will leave it to the leaders before I make a unanimous consent request.

I want to describe briefly to my colleagues what we have agreed on to, hopefully, resolve this matter of too big to fail.

For over a year, Senator SHELBY and I have been working on ways to end bailouts. We agree that ought to be done. We have had differences in other areas, but we have shared a commitment to ensure that taxpayers would never again be forced to bail out giant Wall Street firms that fail.

Last November, I asked our colleagues from Virginia and Tennessee, Senator WARNER and Senator CORKER, to produce an agreement on how best to resolve failed companies.

They did a tremendous job. I commend both of our colleagues. They worked hard, as did their staffs, to draft language as part of the underlying bill. The package they produced would create effective oversight for large firms and make these firms pay for the risks they pose to our economy and country. Their agreement put a mechanism in place to guarantee that when large firms fail, they fail. The management is fired, creditors and shareholders take losses, the company is liquidated, and taxpayers aren't on the hook.

This is a complicated area, and a number of my colleagues on the other side had raised some reservations. So I

spent the last few months working with Senator SHELBY to clear up any misconceptions people may have had and otherwise address the concerns.

After weeks of negotiations—and, really, months if you consider all of the work that has gone on over the last year—I am proud to say the two of us have an agreement in this area. We intend to offer it as an amendment to the bill early this afternoon.

Let me go over the amendment, if I can. First, most of the provisions stay intact because we agree on the fundamentals of this bill. There will be an orderly liquidation mechanism for FDIC to unwind failing systemically significant financial companies.

Second, shareholders and unsecured creditors will still bear losses, and management will be removed.

Third, regulators will still have the authority to break up a company if it poses a grave threat to the financial stability of the United States. That is important.

Large bank holding companies that have received TARP funds will still not be able to avoid Federal Reserve supervision by simply dropping their banks.

Most large financial companies are still expected to be resolved through the bankruptcy process. The bill will continue to eliminate the ability of the Federal Reserve to prop up failed institutions such as AIG.

These measures represent a fundamental change in our country's ability to protect taxpayers from the economic fallout of having a large, interconnected firm collapse.

These measures will end the idea that any one company is too big to fail.

These measures will prevent large failing firms from holding our country hostage, extorting giant taxpayer-funded bailouts under the threat of economic disaster. So, today, we announce a few changes to the larger package.

First, as I have said, one of the ideas proposed by some of our colleagues, including our friends on the other side, was to create a fund, paid for in advance by the largest financial firms, to cover the cost of liquidating failed companies. This was not in my initial draft offered in November and was opposed by the Obama administration. Other Republicans have now expressed concerns about that prepaid fund because whether they pay in advance or after the fact, these costs will be paid by Wall Street, not the taxpayers. So I have no objection to dropping that provision. In fact, I was rather agnostic on it, as many of my colleagues were. We have the common goal to make sure taxpayers would not bear any costs. That is what we tried to achieve. There are a variety of ways of doing it. There were those who raised concerns about the prepayment program and raised the possibility, or the specter, or the optics that somehow they could be getting a preferred status. That was never the intent, but because people are concerned about the optics of it, we agreed to have a postpayment responsibility, or fund, that would be borne by creditors or the industry itself, based on whether there were enough assets in the failed institution to pick up the costs of winding down that firm that was failing. So that is where this comes from.

Creditors will be required to pay back the government any amounts they received above what they would have gotten in liquidation. Those who directly benefited from the orderly liquidation will be the first to pay back the government at a premium rate.

Congress must approve the use of debt guarantees. The Federal Reserve can only use its 13(3) emergency lending authority to help solvent companies. Regulators can ban culpable management and directors of failed firms from working in the financial sector. That is an add-on. It makes sense that if someone has been involved in the mismanagement of a company and caused this kind of disruption in the economy, then it requires that they would be banned from engaging in further economic activities.

With this agreement, there can be no doubt that the Senate is unified in its commitment to end taxpayer-funded bailouts.

There are some other provisions that I will run down very briefly: clawbacks of excess payments to creditors. This will allow, from creditors or the failed company, any payments that exceed what creditors otherwise would have received in liquidation. There is 100 percent taxpayer protection through assessments. It maintains the protections in the bill so if the assets in the failed company and clawbacks from creditors are not enough to pay back all the Treasury borrowing with interest, FDIC will charge assessments to large firms, a penalty interest rate. There is a time limit on receivership. Management gets paid last any salaries or other compensation owed executives. Failed companies are paid last after creditors. There is a ban on management from going to work in the financial sector. There is a judicial check in this amendment, IG review, which requires the inspector general and various agencies and Federal regulators to review actions taken under the orderly liquidation authority. Financial company definitions are included, reports and testimony on top of the requirements in the underlying bill, the FDIC will have additional reporting requirements and will have to testify before Congress.

As I mentioned, the 13(3) lending restrictions are only applied to solvent companies, as well. A congressional approval of FDIC emergency debt guarantees is included in this package as well.

So there are a number of provisions, all of which we think basically make sense. We never argued with these ideas at all and the idea of whether it is prepayment or postpayment was an argument that went back and forth without any strong objections. Many of us were trying to figure out the best way to do this so taxpayers would not be left on the hook. Obviously, I want to leave time for Senator SHELBY who will come over to talk about it. I wanted to give my colleagues an idea of the agreement that I am prepared to support when Senator SHELBY offers this as an amendment.

I see my friend from New Hampshire on the Senate floor. I will be glad to share this information and the other parts of the bill with my colleagues.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized.

Mr. GREGG. Mr. President, I rise to speak about another part of the bill. I congratulate the chairman for the work he and Senator SHELBY did on reaching this resolution on too big to fail. It is an important step forward on a critical part of the legislation. I think it shows that there are a lot of places where we can reach a bipartisan consensus in this bill.

It is my sense that the great and very positive work done on resolution authority will—I would hope it will carry over to things such as the derivatives issue, which needs to be worked on, and issues such as underwriting standards and how the regulatory structure is created and how the chairs are moved around in that area. I think all of these issues are fertile ground for reaching consensus. I know the Senator from Connecticut has been constructive in his efforts to reach across the aisle.

This bill can be a very strong and positive piece of legislation. I hope it ends that way. I think this is a strong and good step in that direction, with the announcement by the chairman on the agreement of resolution authority.

I want to speak about a part of the bill that has been ignored because there have been so many big issues. That is what happens when you bring a bill this large to the floor. It is 1,400 pages, and it has a lot of language in it. It had to be a large bill because it deals with a complex issue. Included in the bill is language that was sort of baggage thrown on the train—that is the way I describe it—in the area of corporate governance. To a large degree, by its own definition, it has virtually nothing to do with financial regulatory reform. This language does a series of things: It primarily federalizes corporate law relative to the manner in which stockholders and directors and executives of corporations are treated.

It is not limited to financial institutions but to any publicly traded company. It guarantees what is known as proxy assets under Federal law. That is a right traditionally set up by States. It sets up standards for how directors are elected under Federal law for all companies. That is a right that has usually been reserved to the States. It even puts in place a requirement that corporations disclose certain information that has absolutely no relevance at all to financial reform because it deals with every company in America

that is publicly held, such as the ratio of compensation between different workers within a company and the manner in which boards of directors are elected, whether it is all at once or under staggered terms.

It is a major push by the Federal Government into an arena that has always, historically, been primarily the role of States. It steps all over States rights, in my opinion—the right of shareholders to have companies they are comfortable with and are being well managed for the purpose of returning a reasonable return to the shareholders. It will undermine shareholders' rights, in my opinion, not increase them.

If we look at the proposal specifically, let's take proxy assets. This is a term of art that essentially says that any group of shareholders will be able to put on a proxy statement a proposal for how the company should be run. If someone wants to balkanize a company, there is probably no quicker way to do it than to have unilateral proxy assets for any issue that is of concern or interest to some group that buys shares. This type of language is essentially put in to promote special interest activity. We all hear about how terrible special interests are. This language is special interest language for the purpose of promoting special interest groups—starting with the trial lawyers, of course, but followed up by various people who have a social justice purpose relative to some corporation.

Let's take a group or a company such as McDonald's. Say a group believes they are selling too much food that creates the opportunity for people to eat too much and causes obesity.

You could have a special interest group that was concerned about that buy stock and force a proxy statement on what type of food McDonald's should sell. It does not stop there. Of course, there are all sorts of issues about which special interest groups want to promote and change corporate governance.

How you manage a corporation is supposed to be primarily in the hands of the boards of directors who are answerable to the stockholders. The purpose, of course, is to increase the value of the stockholders as a whole and their return on their investment. In most instances, that is the primary purpose of a corporation. But this Federal access, this proxy access is all about the opposite. It is about pushing agendas onto the management of corporations, through the boards of directors, through the proxy process that is very special-interest oriented and very narrow in its purpose and is not necessarily directed at return on the investment for the stockholders. It has just the opposite effect.

Short-term objectives become the standard of the day under this type of approach rather than a long-term view, which is what most of our boards of directors are supposed to take relative to these decisions. The cause of the day, the cause du jour, could be any number of things. If it happens to be the activist view of the day, it becomes the issue under corporate governance versus the purpose of managing the corporation well over the long term in order to get adequate return to the shareholders.

It is an inappropriate idea, especially inappropriate for the Federal Government to bury it in this bill. This language applies to every publicly traded corporation in America, not just the financial institutions. Why is it buried in this bill? It should not be in there.

The same can be said of the way this bill, this language approaches directors and what the shareholders' rights are relative to directors. These have historically been State decisions. In fact, the State of Delaware, which is obviously the leading State on the issue of corporate governance and has developed a uniform corporate governance structure which a lot of States have adopted, including my State of New Hampshire, which basically tracks Delaware to a large degree—that has been the law of the land for all intents and purposes, settled law, predictable law, the purpose of which is to have fair and adequate corporate governance, where the directors are responsible to the shareholders under a structure that everybody knows the rules and which is controlled by the States.

Yet this bill comes in and does fundamental harm to that. For what purpose? Because there is an agenda in this Congress to usurp States rights to be able to manage corporate law and to put in place of it opinions and ideas which are only supported by a very narrow group of special interests that basically have gotten the ear of people in this Congress. That is the ultimate special interest legislation.

The implications for these companies is, it is going to be darn expensive, if you are a small- or middle-sized company, to deal with this type of Federal interference with the management of the company and the proxy process. It is a very inappropriate initiative.

Furthermore, this creates an atmosphere where nobody is going to know who is governing what because you are going to now have State law and you are going to have Federal law and you are going to have the SEC whose responsibility will increase dramatically. We already know the SEC is strained to do what we have asked them to do. They have some big responsibilities. They have big responsibilities in the financial reform area. They have big responsibilities in corporate governance, generally. To push this further burden on them is going to be very difficult for them to meet. I happen to be a very strong supporter of having a robust SEC, but we should not burden them unnecessarily with a whole new set of corporate governance rules, which are already adequately and appropriately addressed by State law, primarily Delaware State law but other States which have their own corporate rules.

More important, we should not undermine the rights of stockholders across this country to be able to get a reasonable return on their investments by being reasonably assured that their management—specifically, the directors of the company—are working for the purposes of the company's financial return and strength versus for the purpose of some special interest group that comes in and wants to put special interest legislation in the middle of the corporate governance effort, which is exactly for which this language is proposed. That is why it is here.

The reason this language is put forward is because there are a lot of self-proclaimed social justice groups in this country that decided they want better access to corporate boards and have this Federal proxy access which will basically balkanize, as I said earlier, the process of governing and leading these businesses in which most Americans are invested.

The vast majority of Americans in this country either have a pension fund, IRAs, 401(k)s or are personally invested in the stock market. Why do they invest? They invest to get a reasonable return on that investment, either in the way of appreciation or in the way of dividends or maybe a combination. That is what they do. Most of the savings—a lot of the savings in this country are tied up in that.

Why would this language appear which will basically undermine those stockholders' rights and ability to presume and expect that their directors are going to be managing for the purposes of the stockholders-at-large versus for a single interest group within the stockholder group that happens to want to put a social justice agenda into the management of that corporation? It makes no sense at all, unless you happen to be a special interest group.

We rail around here all the time. I hear, ironically, from a lot of groups that are sponsoring this language, such as Public Citizen, that they are against special interests. Yet here we have the most significant piece of special interest legislation in this whole bill, an attempt to bootstrap special interest groups' social agenda and force them on corporations and stockholders who would otherwise not pursue their agendas because they are interested in getting a return on their investment. It is going to, as I mentioned earlier, make it much more difficult for us to have a vibrant stock market and a corporate structure in this country which is rational, and it certainly will undermine significantly States rights in the area of corporate governance, which historically had primary responsibility for setting up the rules by which our corporations operate.

I hope that as this bill moves down the road, this type of language, which is extraneous—totally extraneous—to the financial reform effort because it affects all public corporations and,

ironically, the three financial corporations which are at the core of the problem we had in 2008 relative to visibility—AIG, Lehman, and I believe one other, maybe Citibank—had a couple of these rules in place anyway. Obviously, they had nothing to do with reducing the implications of the event. Rather, this language is simply put in because some group got somebody's ear. I hope it will be taken out before we get to the end of the day.

I yield the floor.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Illinois.

Mr. BURRIS. Madam President, roughly 2 years ago, the American economy stood on the verge of collapse. After years of growth and seemingly endless prosperity, the honeymoon was suddenly over. The bubble burst. The world was plunged into recession. Banks began to fail, foreclosures skyrocketed, businesses struggled, and many Americans lost their jobs. Working families saw their hard-earned economic security evaporate almost overnight. Some of our largest and most respected financial institutions were forced to close their doors and others were in imminent danger.

In Washington, policymakers found themselves face to face with the worst economic crisis since the Great Depression. They took action. They were forced to make some difficult decisions, but they stopped the bleeding and set America back on the road to recovery.

It is well known that reckless actions by large Wall Street firms helped get us into this economic mess. These companies skirted rules and regulations. They gambled with the securities of the entire financial system, and they lost.

But my colleagues knew that if these large institutions collapsed, they would bring down the rest of our economy with them. They had become, as we say on this floor, too big to fail.

In the face of the potential catastrophe, many of my colleagues summoned the kind of political courage that is rare in this town. They bit the bullet and voted to bail out these large firms, not because the firms deserved government help but because it was the only way to stop this recession from turning into a depression.

It must have been a painful decision, but it provided stability at a volatile moment. It propped up ailing markets all over the world and helped pull this country out of an economic tailspin.

Today, our recovery remains fragile, but we are moving in the right direction. Too many Americans remain unemployed, but the economy is starting to grow again. Key indicators are finally turning around.

As this Chamber considers Wall Street reform, I believe it is time to make sure this can never happen again. Let's protect our financial system from the kind of recklessness and abuse that has cost us so much. Let's make sure we never again will be forced to prop up big banks or risk total collapse. Let us end too big to fail.

As a former banker, I have a deep understanding of the role our financial institutions play. Banks help direct investment to local communities. They provide credit to small businesses and security to working families. When they make bad decisions, they deserve to suffer the consequences of those decisions. That is how our free market system works.

When big banks try to get around these responsibilities, when they package these risk investments and sell off the risk to someone else, that is not banking, that is gambling. Without commonsense regulations and vigorous oversight, Wall Street becomes a casino. I heard my distinguished colleague from Nevada mention that Nevada is the gambling capital of the world. But Nevada would not even buy some of these odds in which some of these banks are involved.

Sometimes these companies get lucky and their bets may pay off. But other times they are not so lucky. That is when they look to working families to either bail them out or suffer a second Great Depression.

We need to make sure Americans never have to face this choice again. We have to prevent firms from growing so large and reckless that they threaten our entire economy. That is why I support the bill introduced by Chairman DODD and say that it is a good bill, it is a strong bill which will end taxpayer bailouts, restore oversight, and set basic rules of the road so we can make sure too big to fail is a thing of the past.

This bill will institute the Volcker rule, which will both restore and modernize some of the key protections of the Glass-Steagall Act of 1933. I am also cosponsor of an amendment that is coming forward in this regard. I really support us going back to Glass-Steagall, having been a banker during those days when you couldn't invest in insurance companies, you couldn't invest in mortgage banking activity, and you had to be a commercial bank that took in the lending and the security of people's assets and made loans in that regard. So this would help prevent fraud, discourage conflict of interest, and keep banks from growing so large they threaten our economic security.

The bill would also give us the tools to monitor big banks for risky behavior so that we could crack down on the irresponsible practices that caused this mess in the first place.

I urge my colleagues to pass this bill as it will be amended, and I call upon them to join my good friend Senator BOXER in passing her amendment, which will help us bring down large unstable institutions without taxpayer bailouts. Taxpayers aren't going to take it anymore. We aren't going to be bailing out these big institutions only to have them turn around and pay huge bonuses to their top officials.

Over the past 2 years, we have made great strides in helping to turn our economy around. In the last Congress, Members of both parties did what was necessary to stop the recession from deepening. Then, a little more than a year ago, I was proud to join many Members of this body in passing the American Recovery and Reinvestment Act—a landmark bill that continues to bring prosperity back to communities all across this country. As a result of these bold actions, our economy is finally on the right track.

So let us in this body, at this time, finish this job. Let's pass this Wall Street reform bill, as amended, so that we can establish the basic rules of the road and allow our free markets to thrive again. Let's end too big to fail so no large bank will be able to gamble away our economic security. Let's do it now because the time is now.

I yield the floor.

PASSING OF ERNIE HARWELL

The PRESIDING OFFICER. The Senator from Michigan.

Mr. LEVIN. Madam President, I wish to start with a poem in honor of Ernie Harwell, who passed away yesterday. This is the way, for decade after decade, the great broadcaster of the Detroit Tigers started when the first game of the season came along.

For, lo, the winter is past,
The rain is over and gone;
The flowers appear on the Earth;
The time of the singing of birds is come,
And the voice of the turtle is heard in our land.

Well, for four decades a man named Ernie Harwell would recite those words. He would recite them at the beginning of the first baseball broadcast of spring training, and those are the words that would tell our people the long, cold winter was over.

Ernie was the radio voice of the Detroit Tigers for 42 years. During that time, there may have been no Michiganian more universally beloved. Our State mourns today at his passing yesterday evening, after a long battle with cancer. He fought that battle with the grace and good humor and the wisdom Michigan had come to expect and even depend on from a man we came to know and love.

This gentlemanly Georgian adopted our team and he adopted our State as his own, as did his family. His career would have been worthy had he done nothing more than bring us the sound of summer over the radio, recounting the Tigers' ups and downs with professionalism and wit, as he did for all those years.

Without making a show of it, Ernie Harwell taught us in his work and his life the value of kindness and respect. He taught us that in a city and a world too often divided, we could be united in joy at a great Al Kaline catch or a Lou Whitaker home run or a Mark Fidrych strikeout. He taught us not to let life pass us by, in his words, ''like the house by the side of the road.''

In 1981, when he was inducted into the Hall of Fame, Ernie told the assembled fans what baseball meant to him, and these were his words:

In baseball, democracy shines its clearest. The only race that matters is the race to the bag. The creed is the rulebook. Color merely something to distinguish one team's uniform from another.

The was a lesson he taught us so well in everything he did in his life.

I will miss Ernie Harwell personally and deeply and fondly. All of us in Michigan will miss the sound of his voice telling us that the winter is past, that the Tigers had won a big game or that they would get another chance to win one tomorrow. We will miss his Georgia drawl, his humor, his humility, his quiet faith in God, and the goodness in the people he encountered. But we will carry in our hearts always our love for Ernie Harwell, our appreciation for his work, and the lessons that he gave us and left us and that we will pass on to our children and to our grandchildren.

Madam President, I yield the floor, and I suggest the absence of a quorum.

Ms. STABENOW. Madam President, today I pay tribute to an extraordinary man who passed away yesterday at the age of 92 years old: Ernie Harwell.

For 42 years, families throughout Michigan tuned into their radios and welcomed Ernie's signature voice into their homes as they listened to him call Detroit Tigers games. When he retired in 2002, Senator LEVIN and I submitted a resolution, which the Senate passed, celebrating his achievements and congratulating him on his many years of service. Today, I join with millions of people in Michigan and around the Nation in wishing Ernie a final farewell.

His accomplishments were many, and he will always hold a special place in our hearts and in our memories. He was the first active broadcaster inducted into the Baseball Hall of Fame, and for good reason. In 1948, when he was calling games for a Minor League team in Atlanta, they actually traded Ernie—their announcer!—for a backup catcher from the Brooklyn Dodgers. He joined the Detroit Tigers in 1960 and during his tenure, he missed only two games—one for the funeral of his brother and another when he was inducted to the National Sportscasters and Sportswriters Association Hall of Fame.

His most memorable broadcasts include the broadcasting debut of Willie Mays in 1951, Bobby Thomson's ''shot heard 'round the world'' that same year, and Hoyt Wilhelm's no-hitter against the New York Yankees in 1958. Ernie brought to life, through the medium of radio, the performances of some of baseball's greats, such as Sparky Anderson, Kirk Gibson, Al Kaline, Denny McLain, Alan Trammell, and so many others.

He loved the people of Michigan, and we surely loved him back. In 2009, he said, ''I deeply appreciate the people of Michigan. I love their grit, I love the way they face life, I love the family values. And you Tiger fans are the greatest fans of all. No question about that.''

Today, Tigers fans everywhere mourn the loss of the great man who gave us so many wonderful memories over the years. I offer my deepest condolences to his beloved wife of 68 years, Lulu, his two sons and two daughters, and his many grandchildren and great-grandchildren. Although Ernie has left us in this world, I know that he will live on in the memories of every Tigers fan.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. NELSON of Florida. I ask consent I be allowed to speak as in morning business.

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

OILSPILL THREAT

Mr. NELSON of Florida. Madam President, we have a huge potential economic and environmental disaster in the Gulf of Mexico that is occurring as we speak. It was on an exploratory rig. It is almost unbelievable how far they can now drill beneath the surface of the water. In this case it was 5,000 feet, and then, at the ocean bottom, they were able to drill another 13,000 feet down to find a pocket of oil, all of which caused this explosion because of the pressure of the oil and the gas, the natural gas, creating such an overpressure that it exploded at the wellhead at the sea bottom. A device, a so-called blowout preventer, that had three safety mechanisms in order to stop the flow of oil in the case of a blowout—none of those three safety mechanisms have worked.

The first was a mechanism that would be activated by a switch 5,000 feet up from the sea bed on the surface of the Gulf of Mexico on the floating exploratory rig. There were actually two switches. One was flipped closer to the surface by workers on the rig, who unfortunately lost their lives and they have not been found. The second switch was at a higher level. I think they refer to it as the bridge. Those workers were rescued. They confirm that switch was flipped, which was to automatically cause the first safety device to go into activation, which was to drive metal plates like pistons together over the wellhead to cut off the flow of oil as it was gushing upwards from the pressure beneath. That activation mechanism did not work.

The second safety mechanism was one called a dead-man switch; that is, whenever power was interrupted, automatically the second safety mechanism was to activate, driving those metal plates together to shut off the flow of oil. That did not work, as well.

The third safety mechanism was to use robotic submersibles that are quite sophisticated, that have manipulator capability even at that depth, the depth of a mile, to go in and physically get hold of a handle, an actuating device that would literally pump a hydraulic pump to drive the plates together to shut off the well. That third safety device did not work either.

This safety device, referred to as a blowout preventer, was designed and built by a company that was contracted to BP, British Petroleum, called Transocean. We now know from the Times of London, in a published article over the weekend, that as far back as 10 years ago, in the year 2000, British Petroleum had been concerned with the safety devices working and had asked Transocean, which built the devices, about this. I asked the CEO yesterday, the CEO of British Petroleum, what occurred 10 years ago. You were put on notice there was a safety mechanism that maybe was not working. He said that was raised and they worked it out.

Apparently, 10 years later, these safety devices did not function—so that they worked it out.

As you know, what is happening, the initial results provided by BP are that it was 1,000 barrels of oil a day. The Coast Guard has estimated that it is now five times that much and we are waiting for updates. So what is gushing from the ocean floor below is 5,000 barrels of oil a day. That is in excess of 220,000 gallons of oil a day that are coming into the waters of the Gulf of Mexico. It has created this slick that is now, because of the southeasterly winds, to start encountering the Barrier Islands off the southeast coast of Louisiana.

Lord knows where this is going to go. So what do they do now? Right now, they are constructing a fancy dome. This is a multistory structure, probably 10 times my height, that has worked in other blowouts but only at depths of 300 and 400 feet.

They have to try to place this dome 5,000 feet deep, over the wellhead, to see if they can then collect that escaping oil into this dome and then run it up a pipe to a transport and collect the oil there.

But, by the way, we do not know that it is going to work at 5,000 feet because of the pressure. We do not know if they can actually locate it 5,000 feet over the wellhead. What comes up if they do—and collect it—is not just oil, but there would be a rush of oil, then there would be a rush of natural gas, there would be a rush of seawater, and all along having sand corroding the inside of that pipe like sandpaper as it rushes up the pipe 5,000 feet to the surface tanker.

Let's hope it works. Because if it does not, then we have to wait 3 months for the rescue well that is presently being dug from the side, to go down 13,000 feet to the pocket of oil, to start sucking the oil out through the rescue well, thereby relieving the pressure up through the defective well that exploded. They will have to, in fact, drill not one but two rescue wells from the side.

But the estimates are that will take 90 days. If this dome does not work, which they are to insert in the ocean in the next few days, then we are looking at the possibility of that oil continuing to gush for 3 months. You can see after 2 weeks how much of an oil slick there is out there.

You can imagine, if you go on for another 13 weeks, how that could start to cover the Gulf of Mexico and much worse as the prevailing winds from the south would carry it onto some of the world's most beautiful beaches, those along the northwest coast and the gulf coast of Florida.

But, oh, by the way, there is another threat now. That is something Mother Nature has designed, known as the Loop Current. The Loop Current is a current of water that comes up the western side of Cuba, in between Cuba and the Yucatan Peninsula of Mexico, up into the northern Gulf of Mexico, loops and comes to the south, off the southwest coast of Florida, loops down around the Florida Keys and turns northeast and northward, hugs the Florida Keys, becomes the Gulf Stream, which hugs the Keys. Those delicate coral reefs, 85 percent of North America's coral reefs are in the Keys. And then it hugs the shore of Florida along the southeast coast all the way up to central Florida, to Fort Pierce, where it then leaves the coast of Florida, goes across the Atlantic Ocean and ends up over close to Scotland. That is the Gulf Stream. That was the stream that 500 years ago used to carry the Spanish Galleons, along with the wind, back from their discoveries of the New World as they went back to Europe.

You can imagine, if the spill gets so big in the Gulf of Mexico that then it encounters the Loop Current and that spill then starts carrying that oil down the southwest coast of Florida, around the Florida Keys, hugging the Florida Keys and the coral reefs and up the east coast of Florida, we are looking at potential major economic and environmental loss.

So the question is: What do we do? Well, first of all, I have not only requested but, in my kind of mild way, have strongly suggested that we stop all exploratory drilling, at least until the investigation that many of us in this Chamber have asked for, until that investigation is over, as to what went wrong and what we can do to prevent it in the future.

Oh, by the way, that is not going to be a few weeks' investigation. By the time you get through with all this, it is going to be months. So we should not be doing any more exploration with the possibility of more explosions such as this. I did not say production wells; they need to keep producing.

This risk, this blowout, was in an exploratory rig. That ought to be stopped. I asked the CEO of BP yesterday: Have you stopped exploratory drilling?

He says: Yes.

I said: Where?

He said: In the Gulf of Mexico.

I said: How about worldwide?

He said: No; only in the Gulf of Mexico.

Well, what should the President do, other than what he is doing; that is—and I give credit where certainly credit is due—the operation being taken over by the top four-star Admiral of the Coast Guard, since they have the lead. I have talked to the Chairman of the Joint Chiefs; the U.S. Navy is fully supporting the lead, which is the Coast Guard; all the agencies of Government; NOAA, Dr. Lubchenco; the Department of Interior, our former colleague from the Senate, Secretary Ken Salazar. I mean, you can go on down the list. They are all pouring in to try to help because we have a disaster of monumental proportions that is in the making and ruining peoples' lives, their livelihoods, their incomes, their way of life, their culture. We are talking about all of the above.

So I strongly suggest to the President that he ought to abandon his 5-year plan that was for offshore drilling in the Outer Continental Shelf, but which he proposed, at least in the Continental United States, he proposed it only in the Gulf of Mexico and off the mid-Atlantic coast. I suggest he withdraw that. If he does not, I believe it is dead on arrival.

Where do we go from here in the future? Potentially, we are looking at extraordinary financial loss. So I asked the chairman and CEO of British Petroleum yesterday afternoon, I said: You realize the existing law on liability says you handle the cleanup costs but that the existing law has a cap on your liability after $75 million. Do you agree that the economic loss is going to exceed $75 million?

He said: Yes.

I said to him: You have been saying on TV that you think British Petroleum will be the responsible party and take care of this. When it exceeds $75 million, are you going to accept all that liability?

He said: We will work that out.

I said: Well, if I understand that, as far back as 2000, your company had a problem with Transocean and their safety devices and the blowout preventer. Are you not going to have some considered lawsuit against Transocean for a defective piece of equipment?

He said: We are going to work that out.

So I suspect what we are going to see is some of the most enormous and complicated lawsuits you have ever seen, with a lot of finger-pointing that is going to be going around many different circles, and the question of liability for all those people who are going to be losing their jobs and their livelihood and their cultures if this gusher, this underwater volcano, is not cut off. I suspect what we are going to see is an attempt to avoid that economic liability. Therefore, that is why Senator MENENDEZ and Senator LAUTENBERG and I filed, Monday night, a bill that will lift that liability cap from a meager $75 million to $10 billion, because you can see that $10 billion economic loss is not an unrealistic figure and is what could happen if this oil continues to gush for another 3 months.

Well, let me complicate things a little bit. Because if the gusher continues for 3 months, you know what starts on June 1? Hurricane season. Do you know it has been historically a fact that several hurricanes brew in the month of June in the Gulf of Mexico? So can you imagine a big part of the Gulf of Mexico being polluted with oil and suddenly having that all stirred up with the complications of a hurricane.

This is not a pretty picture. It is a major environmental and economic disaster of the most gargantuan proportions that we can ever imagine.

For my final comments, let me say, I have, this Senator, often been derided, derided for standing for the economic and environmental interests of my State, my State of Florida, which has more coastline than any other State, save for Alaska, and certainly has more beaches than any other State, for trying to protect those interests as well as the interests of the U.S. military, since most of the Gulf of Mexico off Florida is the largest testing and training area for the U.S. military in the world.

From two successive Department of Defense Secretaries, Rumsfeld and then Gates, I have in writing that the policy of the Defense Department is in place that oil activities and oil structures are incompatible with the testing and training necessities of the Department of Defense in preparation for our national security interests. This Senator will continue to protect all of those interests.

It is my hope people will understand that the tradeoffs of drilling close to Florida are simply not worth the risk. Why is that? Because of the statistics of the Department of the Interior concerning undiscovered oil in the Gulf of Mexico. Ninety percent of that oil is not off of Florida; it is in the central and western gulf. From the statistics of the Department of the Interior, only 10 percent of that undiscovered oil is off Florida. Is it worth the risk for that de minimis oil to have future potential economic and environmental disasters? Clearly, the answer from this Senator is as it has been for over 30 years that I have been waging this battle, first as a young congressman and now in the position of representing all of Florida: The tradeoff risk is not worth it.

I wanted to bring this to the attention of the Senate. Unfortunately, this story is a continuing one because although this story began over three decades ago, it is still a drama that continues to unfold with tragic consequences.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. SANDERS. Madam President, as soon as I possibly can, I intend to bring

up an amendment which calls for transparency at the Fed. I must tell my colleagues that this amendment is one of the more unusual amendments that has been brought up in the Senate, I suspect for many years, because of the rather strange coalition that has come together around it. How often do we have the AFL–CIO, a progressive organization, and Freedom Works, a very conservative organization, supporting the same effort? How often are the SEIU, the largest union in America; moveon.org, 5 million members as a progressive organization; and Public Citizen, another progressive organization, striving for the same goal as the National Taxpayers Union or the Eagle Forum or Americans for Tax Reform, very conservative organizations? How often do we have some of the most progressive Members in Congress—and I include myself within that fold—working with some of the more conservative Members? It doesn't happen every day, but that is what is happening on this amendment.

I rise to talk about the amendment, what it does, and why so many diverse groups, representing tens of millions of Americans, are coming together in support of it. I also wish to suggest what it does not do and some of the ways it has been distorted by the Fed and other groups that are opposed. I have seen some of the statements made by the Fed which are absolutely untrue in terms of what this amendment does and does not do.

For me, the origin of this amendment came on March 3, 2009, when, as a member of the Budget Committee, I asked the Chairman of the Fed, Ben Bernanke, a very simple question. I asked him if he would tell me, the committee, and the American people which financial institutions received over $2 trillion in zero interest or near zero interest loans during the start of the economic crisis. During the bailout period, some $2 trillion of taxpayer money was lent. My question was: Mr. Chairman, who received that money? I don't think that is an unfair question. We have heard great debates here on the Senate floor about $5 million or $10 million. To ask who received over $2 trillion in zero or near zero interest loans is something I believe should be answered by the Fed, and they should make that information public. But Bernanke said no. He gave his reasons.

On that very day, I introduced legislation that would require the Fed to put this information on its Web site, make it public, just as Congress required the Treasury Department to do with respect to the $700 billion TARP money. Some may like TARP; some may not. Some may have voted for it; some may not have. But the information about who received the money, when it was paid back, et cetera, is right there on the Web site of the Treasury Department.

This $2 trillion in zero or near zero interest loans does not belong to the Fed. It belongs to the American people, and the American people have a right to know where trillions of their taxpayer dollars are going. It is not complicated. One doesn't need an MBA from Wharton to know that. That is why millions of Americans, whether conservative or progressive or in between, have come together to say we need transparency at the Fed.

This amendment not only requires that the Fed tell us who has received the $2 trillion it lent out, but, similar to the language incorporated in the House bill, it calls for an audit of the Fed by the GAO. As we all know, the GAO is the nonpartisan Government Accountability Office that does a great job in trying to figure out where there is waste and fraud within the government. That is it. This is a very simple, short amendment. It is five pages. It calls for transparency at the Fed and a straightforward audit. Who got what? When did they get it? On what basis and on what terms? Who was at the meetings? Who made the decisions and were there conflicts of interest? Simple, factual questions the American people deserve answers to. That is what it is; it is not complicated.

I understand this amendment will not be supported by everyone. Some may suggest, inaccurately—and I have heard these statements—that this amendment ''takes away the independence of the Federal Reserve and puts monetary policy into the hands of Congress.'' Let me address those concerns by simply reading exactly what is in the amendment. It is not complicated. I quote from page 4 of the amendment. This is what it says. I don't think I can be more straightforward than this:

> Nothing in this amendment shall be construed as interference in or dictation of monetary policy by the Federal Reserve system, by the Congress, or the Government Accountability Office.

It can't be more simple. It can't be more straightforward than the language in this amendment. So when people tell us this amendment is going to interfere and have Congress dictate monetary policy, it is simply not true. In other words, this amendment does not take away the ''independence of the Fed'' and it does not put monetary policy into the hands of Congress. This amendment does not tell the Fed when to cut short-term interest rates or when to raise them. It does not tell the Fed what banks to lend money to and what banks not to lend money to. It does not tell the Fed which foreign central banks it can do business with and which ones it cannot. It does not impose any new regulations on the Fed, nor does it take any regulatory authority away from the Fed. It does none of those things, no matter what anybody coming to the floor may say.

What the opponents of this amendment are doing is equating independence, which we support, with secrecy, which I do not support. At a time when our entire financial system almost collapsed, we cannot let the Fed continue to operate in the kind of secrecy they have operated in for years. The American people have a right to know.

Very often, we see Senators coming down here to the floor to make the point that working people have to play by the rules. How often have we heard that rhetoric? What are the rules governing the Fed? Who makes those rules or do they just make them up as they go along?

Let me list a few of the questions millions of Americans and Members of Congress are asking that a GAO audit might help to answer. I am sure there are many more.

Question: Why was Lloyd Blankfein, the CEO of Goldman Sachs, invited to the New York Federal Reserve to meet with Federal officials in September of 2008 to determine whether AIG would be bailed out or allowed to go bankrupt? I wasn't invited to that meeting. Other Senators were not invited to that meeting. Lloyd Blankfein was invited to that meeting.

When the Fed and Treasury decided to bail out AIG to the tune of $182 billion, why did the Fed refuse to tell the American people where that money was going? Why did the Fed argue that this information needed to be kept secret ''as a matter of national security''?

When AIG finally released the names of the counterparties receiving this assistance, how did it happen that Goldman Sachs received $13 billion of this money, 100 cents on the dollar on what AIG owed them? How did that happen? I don't know. We don't know. The American people don't know. But I think we have a right to know.

Did Goldman Sachs use this money to provide $16 billion in bonuses to its top executives the next year? All over this country, Americans have lost their jobs. They have lost their homes. They have lost their savings. They have lost their ability to send their kids to college because of this recession caused by Wall Street. Yet Goldman Sachs gets $13 billion—100 cents on the dollar—after AIG is bailed out at a meeting in which Lloyd Blankfein is in attendance.

I think it is an interesting question. I don't know the answer, but I think the American people have a right to know. A GAO audit of the Fed might help explain to the American people if there were any conflicts of interest surrounding that deal. Who got what? On what basis? On what terms? Who was at the meetings? Who made the decisions? And were there conflicts of interests?

In 2008, it seems to me—I did not go to Harvard Business School, but it does seem to me—there was an apparent conflict of interest at the Federal Reserve Bank of New York when Stephen Friedman, the head of the New York Fed—who also served on the board of directors of Goldman Sachs—let me repeat that: He was the head of the New York Fed; he also served on the board of directors of Goldman Sachs—and the New York Fed approved Goldman's application to become a bank holding

company, giving it access to cheap loans from the Federal Reserve.

Let me quote from an article published in the Wall Street Journal on May 9, 2009, and let the American people determine whether this deserves a GAO audit. Quoting the Wall Street Journal:

> Goldman Sachs received speedy approval to become a bank holding company in September of 2008. . . . During that time, the New York Fed's chairman, Stephen Friedman, sat on Goldman's board and had a large holding in Goldman stock, which because of Goldman's new status as a bank holding company was a violation of Federal Reserve policy. The New York Fed asked for a waiver, which after about 2½ months, the Fed granted. While it was weighing the request, Mr. Friedman bought 37,300 more Goldman shares in December. They have since risen $1.7 million in value. Mr. Friedman, who once ran Goldman, says none of these events involved any conflicts.

That was from the Wall Street Journal of May 9, 2009.

Well, maybe Mr. Friedman is right. Maybe there is not a conflict of interest. It seems to me there is a very apparent conflict of interest, but that is an issue that maybe a GAO audit might want to look at.

As a result of the bailout of Bear Stearns and AIG, the Fed now owns—this is pretty amazing—now owns credit default swaps betting that California, Nevada, and Florida will default on their debt. Let me repeat that. Senators from California and Nevada and Florida might be interested in this. As a result of the bailout of Bear Stearns and AIG, the Fed now owns credit default swaps betting that California, Nevada, and Florida will default on their debt.

So the Federal Reserve stands to make money if California, Nevada, and Florida go bankrupt. What can I tell you? This is the reality. I know it will seem strange to the American people that the Fed makes money and is betting that three of our great States go bankrupt. This may make sense to the Fed. It may make sense to some of my colleagues in the Senate. It does not make sense to me. Frankly, I do not believe it makes sense to the American people. But this is what an audit of the Fed will allow us to better understand: whether we want the Fed to be betting against some of our great States, that they will go bankrupt.

It has been reported that the Federal Reserve pressured Bank of America into acquiring Merrill Lynch—making this financial institution even bigger and riskier—allegedly threatening to fire its CEO if Bank of America backed out of this merger. When the merger went through, Merrill Lynch's employees received $3.7 billion in bonuses. Was this a good deal or a bad deal for the American taxpayer? Perhaps a GAO audit can help us find out.

When the Fed provided a $29 billion loan to JPMorgan Chase to acquire Bear Stearns, the CEO of JPMorgan Chase, Mr. Diamond, served on the board of directors at the New York Federal Reserve. Let me repeat that. When the Fed provided a $29 billion loan to JPMorgan Chase to acquire Bear Stearns, the CEO of JPMorgan Chase, Mr. Diamond, served on the board of directors at the New York Federal Reserve.

Did this represent a conflict of interest? To my mind, it does. Maybe I am wrong. But that is what a GAO audit can help explain to the American people.

Again, I know we are going to have Senators running down here saying: Oh, we are trying to break the independence of the Fed.

We are not trying to do that. What we are trying to do is allow the American people to get a glimpse and an understanding of some of the actions of the Fed involving huge sums of money.

Currently, some 35 members of the Federal Reserve's board of directors are executives at private financial institutions which have received nearly $120 billion in TARP funds, but we do not know how much these big banks received from the Fed. A GAO audit could answer that question.

Here is a very interesting point I know a lot of Senators have raised in different context: If the goal of the huge amounts of money in Fed loans—trillions of dollars in Fed loans—to large financial institutions was to achieve the goal of getting credit flowing to small- and medium-sized businesses that were cash starved—they were crying out for credit—why is small business lending in freefall? What happened? We gave the large financial institutions trillions of dollars, presumably to get it out to the small- and medium-sized businesses. They have not gotten it. Question—I think it is a reasonable question, and I am not the only one who is asking it—how much of those zero interest or near zero interest loans that these huge financial institutions received from the Fed were simply invested in Federal Government bonds, earning an interest rate of 3 or 4 percent?

In other words, are we looking at a huge scam? I cannot think of a better word. You give these large financial institutions trillions of dollars in zero interest loans in order to enable them to provide desperately needed loans to small- and medium-sized businesses, so those businesses can expand and create jobs. Yet that appears not to be happening.

Question: How much of those—those several trillion dollars in loans—simply went from the Fed to the financial institutions in order to purchase government-backed obligations at 3 or 4 percent? If that is the case, that is just giving away money. You have zero interest coming in; you get 3 or 4 percent guaranteed by the faith and credit of the United States of America.

Well, do you know what. I do not know. I do not know how much. I suspect, other people suspect, that was done. How much, I do not know. Maybe the GAO can tell us.

This amendment is virtually identical to legislation I have introduced on this subject that has 33 cosponsors. Just as we have a very broad spectrum of political ideology from grassroots organizations on the left and the right—conservative, progressive; Democrat, Republican—supporting this amendment, so we have had widespread—across ideology—support for this legislation.

Let me mention who the 33 cosponsors are. You will see how people with very different political ideologies have come together. The names of those people are: Senators BARRASSO, BENNETT, BOXER, BROWNBACK, BURR, CARDIN, CHAMBLISS, COBURN, COCHRAN, CORNYN, CRAPO, DEMINT, DORGAN, FEINGOLD, GRAHAM, GRASSLEY, HARKIN, HATCH, HUTCHISON, INHOFE, ISAKSON, LANDRIEU, LEAHY, LINCOLN, MCCAIN, MURKOWSKI, RISCH, SANDERS, THUNE, VITTER, WEBB, WICKER, and WYDEN. Those are the people who have supported the legislation.

This amendment coming to the floor has 20 cosponsors—Republicans and Democrats alike—and I want to thank all of those Senators for their support.

In terms of progressive grassroots organizations, this amendment enjoys the strong support of the AFL–CIO; the SEIU, the largest union in America; the United Steelworkers of America; Public Citizen; the New America Foundation; the Center for Economic Policy and Research; the Roosevelt Institute; the U.S. Public Interest Research Group; and Americans for Financial Reform, which in itself is a coalition of over 250 consumer, employee, investor, community, and civil rights groups.

Let me read you a letter of support I received for this amendment from Bill Samuel, the legislative director of the AFL–CIO. This what the AFL–CIO said:

> On behalf of the AFL–CIO, I am writing to urge you to support—

This is a letter going out to other Senators—

> the Sanders, Feingold, DeMint, Leahy, McCain, Grassley, Vitter, Brownback amendment to increase transparency at the Federal Reserve. . . . Working people want to know who benefitted from the liquidity provided by taxpayers during the crisis and this amendment will ensure that we receive this information.

Let me also quote from a letter I received from Andy Stern, the president of the SEIU, the largest union in the country; and also from Leo Gerard, the president of the United Steelworkers of America; and a number of other academics and economists. This is what they write:

> Since the start of the financial crisis, the Federal Reserve has dramatically changed its operating procedures. Instead of simply setting interest rates to influence macroeconomic conditions, it rapidly acquired a wide variety of private assets and extended massive secret bailouts to major financial institutions. There are still many questions about the Fed's behavior in these new activities. The Federal Reserve balance sheet expanded to more than $2 trillion, along with implied and explicit backstops to Wall Street firms that could cost even more. Who

received the money? Against what collateral? On what terms and conditions? The only way to find out is through a complete audit of the Federal Reserve. That's why we support the Sanders, Feingold, DeMint, Leahy, McCain, Grassley, Vitter, Brownback amendment to increase transparency at the Fed.

That is what leading progressive economic and social justice organizations are saying about this amendment.

Let me briefly, if I might, quote from some of the conservative organizations. One of the larger ones is the National Taxpayers Union. I do not usually quote from the National Taxpayers Union. I think I am not rated very highly on their chart. But this is what they say in support of this amendment:

The National Taxpayers Union urges all Senators to vote ''YES'' on S. AMDT 3738 to the financial regulatory reform legislation. This amendment, introduced by Senators Sanders and DeMint, would require the Government Accountability Office to conduct an audit of the Federal Reserve. . . . Transparency is not a Democrat or Republican issue, but rather an issue of right or wrong. If the Senate insists on further expanding the Fed's reach, Americans deserve to know more about the workings of a government-sanctioned entity whose decisions directly affect their economic livelihood. A ''YES'' vote on S. AMDT 3738 will be significantly weighted as a pro-taxpayer vote in our annual Rating of Congress.

We also have support from other conservative organizations, including Americans for Tax Reform, the Campaign for Liberty, the Rutherford Institute, the Eagle Forum, FreedomWorks, and the Center for Fiscal Accountability. In a letter of support I received from them they write:

We urge you to vote for Senators Sanders, Feingold, DeMint, and Vitter's Federal Reserve Transparency Amendment . . . This amendment does not take away the ''independence'' of the Fed. It simply requires the GAO to conduct an independent audit of the Fed and requires the Fed to release the names of the recipients of more than $2 trillion in taxpayer-backed assistance during this latest economic crisis. Any true financial reform effort will start with requiring accountability from our nation's central bank.

Let me conclude by saying this amendment is not a radical idea. I have just indicated to you that we have progressive groups, representing millions of people, and we have conservative groups, representing millions of people. We have the AARP, the largest senior group, representing, I think, tens of million of Americans.

I should also mention to you that as part of the budget resolution debate in April of 2009, the Senate voted overwhelmingly in support of this basic concept, by a vote of 59 to 39.

In the House of Representatives, this concept passed the House Financial Services Committee by a vote of 43 to 26 and was incorporated into the House version of Wall Street reform that was approved by the House last December.

In other words, a lot of what I am talking about is in the House bill—not a radical concept. This idea has the support of the Speaker of the House, NANCY PELOSI, who said Congress should ask the Fed to put this information ''on the Internet like they've done with the recovery package and the budget.'' That is what this amendment does.

This concept has also been supported—and this is important. I know my friend from Texas wants to speak. I am winding down and I apologize for going on this long. But it is important to point out that this concept has also been supported by two Federal courts that have ordered the Fed to release all of the names and details of the recipients of more than $2 trillion in Federal Reserve loans since the financial crisis started as a result of a Freedom of Information Act lawsuit filed by Bloomberg News.

The Fed has argued in court that it should not have to release this information citing, according to Reuters: ''an exemption that it said lets federal agencies keep secret various trade secrets and commercial or financial information.'' That is what the U.S. Appeals Court in New York said in disagreeing with the Fed. It was a unanimous three-judge appeals court. This is what they wrote in their opinion:

to give the [Fed] power to deny disclosure because it thinks it best to do so would undermine the basic policy that disclosure, not secrecy, is the dominant objective. If the board believes such an exemption would better serve the national interests, it should ask Congress to amend the statute.

Let me conclude by saying this: We now have 59 Senators having voted for this transparency, 320 Members of the House, and 2 U.S. courts. All we want to know is who got trillions of dollars. That is what we want to know. We also want to know on what basis, on what terms, and who was at the meetings where key decisions were made.

This is an important amendment, and it is an amendment that millions of people want to see pass. I hope we will have an opportunity to offer it as soon as possible, and I hope it is passed.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate hearing the Senator from Vermont describe his amendment. I haven't seen the text of the amendment, but I am a cosponsor of the bill that would do exactly what he says. I think transparency at the Fed is something we can agree on. So I look forward to seeing the rest of the amendment, and if it is just that, I will be very pleased to work with him for passage.

I rise to speak today on the Hutchison-Klobuchar amendment. My colleague, Senator KLOBUCHAR from Minnesota, is also on the floor. We wish to take a moment to talk about our amendment, which will assure that community banks have a more level playing field than could be the case if the bill that is before us, the Dodd bill, passes without our amendment.

Our debate to reform our financial regulatory structure should focus first and foremost on filling the gaps in regulation that led to our financial crisis. I am encouraged by the good-faith efforts of Senators DODD and SHELBY to end too big to fail, and I certainly hope we will see language on that so it is put aside, because I think that is the most important area of this bill. We must end too big to fail. When Senator DODD and Senator SHELBY produce the language they have agreed on, I think that will open the rest of this bill for amendments such as the Hutchison-Klobuchar amendment we are discussing now that I think should be part of overall reform.

We have to look at other areas of concern besides too big to fail such as the lax underwriting standards and the lack of transparency over our derivatives markets. Those are amendments that will also be coming to the floor to assure we address those key issues in financial reform. One area on which we can find agreement is that our Nation's community banks were not a cause of the financial collapse we have seen in the last 18 months. They didn't have risky loans and financing schemes that sent our economy into a downward spiral. Financial reform should not punish the financial institutions such as community banks for faults they did not commit. If anything, financial reform should reflect what we learned from the safe and sound practices that are used by community banks.

We should learn from the example of Texas First Bank, Galveston County's largest locally owned family of community banks. On September 13, 2008, Hurricane Ike made landfall over Galveston, TX, packing strong winds and a high storm surge that ravaged much of Texas's gulf coast. Two days later, on Monday, September 15, 2008, Texas First Bank was open for business and many of its locations provided ''Hurricane Ike Relief Loans'' and other services to area families and small businesses reeling from Ike's damage.

Senator MARY LANDRIEU and I visited Galveston several weeks later. I was there a day or so after the surge that came over Galveston in a helicopter, but I couldn't get on the ground at that point. So we came several weeks later, Senator LANDRIEU and I, because we wanted to look at the recovery, because Senator LANDRIEU of course has had so much experience with Hurricane Katrina. We wanted to do everything we could to get help to people. We had a press event at a small neighborhood restaurant. The community banker from Hometown Bank was there and was applauded by the owner of the little Italian restaurant. He said: The banker was in there helping us clean up the restaurant and made sure that we had the liquidity to open our doors, because there was no food to be had on Galveston Island at that time. They wanted to serve their customers, and their community banker was right there with them.

President Obama himself has said that community banks are intimately woven into the fabric of the community. Banks such as Texas First Bank and Hometown Bank in Galveston County are examples of this.

In uncertain financial times, community banks worked hard to steady the financial hands at the wheel. Community banks provide depository and lending services critical to America's families and small businesses. Despite holding just 23 percent of the banking assets in our Nation, they make two-thirds of the loans to small businesses. Small businesses must have support from community banks to invest, to expand, and to create jobs.

Despite the widespread recognition of the importance of community banks, the current bill imposes on them a regulatory structure that punishes them. I am particularly concerned about a provision in the current bill under which the Federal Reserve will only retain supervisory authority over bank holding companies that have over $50 billion in assets. Republicans and Democrats agree that we don't want too big to fail anymore because too big to fail means taxpayer bailouts. So what does a bill say that says large banks over $50 billion will have the implicit backing of the government? It means they will be too big to fail. Creditors expecting to be made whole through this backing will offer cheaper credit to the large banks, putting community banks at a competitive disadvantage through no fault of their own. That is the first reason we need to pass the Hutchison-Klobuchar amendment.

The second reason is that this provision arbitrarily shifts many community banks out of their current prudential regulator: the Federal Reserve. The Federal Reserve supervises more than 6,500 banks of all sizes in all parts of the country. These banks include large bank holding companies such as Bank of America, Chase, and J.P. Morgan. The Fed also supervises smaller community banks: Citizens National Bank of Nacogdoches my bank—in addition to Texas First Bank in Galveston County, First State Bank of Mineral Wells, and 32 other State-chartered banks that are members of the Federal Reserve in Dallas.

I have heard from the president of the Federal Reserve Bank in Dallas, Richard Fisher, as well as the presidents of Federal Reserve Banks of Kansas City, Minneapolis, Philadelphia, and Richmond, all of whom are in town today and all agree stripping the Fed of its supervisory authority will drastically reduce the Fed's ability to achieve its objective of maintaining sound monetary policy for our country. Under the Federal Reserve Act, the Fed is mandated to effectively promote goals of maximum employment, stable prices, and moderate long-term interest rates. Implicit to this mandate is a goal of fostering stable, long-term economic growth, which requires stability in the banking and financial system.

For the Fed to have proper insight into the banking system, it must maintain supervision over a wide breadth of banks located across the country. In curtailing the scope of the Federal Reserve's supervisory authority, Senator DODD's bill does the opposite. The Fed will lose its 845 State member banks which are so vital in providing a good sense of underlying economic forces in their respective localities. This will leave the Fed to cull information about the state of our economy from—where? From the banks with $50 billion and above in assets, meaning monetary policy going forward will be a reflection of our largest financial institutions.

Well, monetary policy cannot and should not be geared toward the New York banks and the Washington policymakers. The Federal Reserve needs insight into the health of our banking system and economy as a whole. That is why we have regional Fed banks. It is important that they have the supervisory authority of banks of all sizes and in all parts of our Nation.

I wish to ask my colleague Senator KLOBUCHAR—who has stepped up to the plate to be a cosponsor of this amendment so we have bipartisan sponsors—to say a word. I wish to yield to the Senator from Minnesota for a few minutes to have the Minnesota perspective and to make sure the people know that the community banks of this country should not speak in a whisper to the ''on high'' in Washington and New York. No. They should be speaking in a loud voice to all of us through their Federal Reserve banks, which means the Hutchison-Klobuchar amendment should pass.

I yield the remainder of my time to the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota.

Ms. KLOBUCHAR. I say thank you so much to my friend from Texas. I wish to thank her for her leadership on this issue.

As she mentioned, our amendment seeks simply to preserve the Federal Reserve's authority to supervise community banks and bank holding companies as well as to preserve a system that ensures the institution charged with our Nation's monetary policy has a connection to not just Wall Street but to Main Street.

As the Presiding Officer knows, for the most part, our mid-sized banks, small banks in the States throughout this country—Texas and the Midwest—stayed out of these risky deals. They stayed away from these high-flying, way too risky deals of the past decade. They made meat-and-potatoes loans to consumers and businesses in their communities. They did well for their customers.

These Main Street banks did not dance down the yellow brick road to Wall Street dealmaking or Washington hobnobbing. When the pavement on Wall Street began to buckle and collapse, these community banks did not panic and run to Washington with tin cups in outstretched hands. They continued to conduct their business, behaving the way—well, the way banks are supposed to behave.

The Federal Reserve Bank of Minneapolis, along with 11 other regional banks, provides a presence across this country that gives the Fed grassroots connections, insights into the local economies, as well as legitimacy when they have to make tough decisions that affect not just Wall Street but the small local banks that serve so many of our communities. Through their working relationships with community banks, the regional Federal Reserve banks also collect and analyze important information about the movements and trends in local economies. This relationship is a two-way street as it also provides a voice for community banks that would be lost if the Federal Reserve were to only supervise the largest banks.

As the president of the Federal Reserve Bank of Minneapolis noted, it would be shortsighted to conclude that the Federal Reserve: ''can safely be stripped of its role as a supervisor of all banks.''

As he noted, disruptions in the financial system can come from all sectors, and the connection the regional Federal Reserve banks provide to local economies can be vital in ensuring the stability of the entire financial system.

I say to my friend from Texas, just this morning Noah Wilcox, president of the Grand Rapids State Bank in Grand Rapids, MN—a part of the country most hurt by this economic downturn caused by Wall Street—wrote to me and said this:

> All Senators should be reminded that the Federal Reserve System was created to serve all of America, not just Wall Street.

I thank the Senator from Texas for her leadership, and I look forward to working with her on this amendment. I was glad that Senator MURRAY joined us on our amendment, and we have a number of other cosponsors. Again, I thank the Senator.

Mrs. HUTCHISON. Mr. President, I thank the Senator from Minnesota. I appreciate the bipartisan nature of the amendment. I think when people look at this amendment on both sides of the aisle, it will be clear that the community banks need this amendment to keep a level playing field and to assure that there is no concept left in this country of too big to fail. I thank my colleague from Minnesota, Senator KLOBUCHAR, and I yield the floor.

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

Mr. SHELBY. Mr. President, as drafted, the bill we are considering this week allows for bailouts. As a result, what my friends on the other side like to call Wall Street reform is actually a Wall Street dream and a Main Street nightmare for all of us.

Over the last several weeks, I have clearly articulated what needs to be changed in the underlying bill because

we must do everything we can to create a credible resolution regime that protects not only our financial system but, more importantly, the American taxpayer.

Fortunately, the chairman of the Banking Committee, Senator CHRIS DODD, and I have worked through a number of issues and resolved to my satisfaction the concerns that some of us have expressed about government bailouts.

I believe it is simply unacceptable to expose innocent taxpaying American families to the excessively risky practices of Wall Street gamblers who are happy to enjoy the upside but want to socialize the downside.

Mr. President, taxpayers should not incur losses from the bad outcome of private risks they did not undertake. In order to achieve this, the Dodd-Shelby amendment that we will offer eliminates the $50 billion bailout fund—some people have called it the ''honey pot.'' It would significantly tighten up language in the bill dealing with the Federal Reserve's ability to provide liquidity to the financial system in times of severe market distress. It requires the approval of the Treasury Secretary before the Federal Reserve can undertake any emergency lending. It also establishes strict solvency and collateral requirements for any emergency Fed lending. It establishes strict accountability standards for any emergency Federal lending.

All of this is something we didn't have 18 months ago when the financial crisis came upon us. Together, we have tightened the resolution language to ensure that the creditors of failing firms will receive bankruptcy-like treatment.

A resolution regime for large failing financial institutions is simply not credible unless we make clear in language that backdoor bailouts are impossible. In this amendment we will be offering, we have significantly tightened up language in the bill dealing with the provision of debt guarantees by the FDIC and the Treasury. Any such guarantee will now require prior congressional approval.

We have also clarified and tightened the language in the bill regarding resolution and the powers of the Fed, Federal Deposit Insurance Corporation, the Treasury, and others to prevent bailouts. We have included provisions requiring postresolution reviews to determine whether regulators did all they were supposed to do to prevent the failure of a systemically significant institution. Such a review, I believe, is essential to hold regulators accountable for their actions, or inaction, as the case may be.

I believe we must put an end to the ad hoc responses of the Federal Government, which only lead to fear and panic. I believe these changes will help us do that.

I thank the committee chairman, Senator CHRIS DODD, for working with me to tighten the language in this part of the bill. I also thank our respective staffs who have worked day and night and weekend after weekend to get us where we are this afternoon.

All of these changes are important and necessary to make bailouts a thing of the past. With these changes, I believe we have done what Congress can do to prevent any future bailouts. It will now be up to the regulators to follow the law and do what we expect them to do.

I strongly support these changes, and I urge my colleagues to support them as well. However, I don't want to leave the impression that I support the entire bill at this time because we are making these necessary changes. We are not there yet.

Beyond resolution and government powers in a crisis, this over 1,500-page bill contains a broad reach into the global financial system and the American economy. Now that we are over this particular hurdle, we will be addressing many additional concerns we have in the coming days. For now, this afternoon, I am pleased to join with Chairman DODD in supporting this amendment.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, my colleague from Arkansas will speak soon. I want to say to the former chairman of the Banking Committee, my friend, I appreciate his comments. There are four major parts of this very large bill. They are too big to fail, the early warning system, consumer protection, and dealing with exotic instruments. There is a lot in the bill besides those major points, but those are the four major thrusts of the legislation.

I hope our colleagues will support this amendment as we vote shortly on it, and that it will help us reach agreement on what I argue is a major part, which is that we never want to see taxpayers again confronted with having to underwrite a failed institution. There has been a lot of hard work and negotiation to get here, and not just over the last couple of days, but weeks.

I particularly thank Senator MARK WARNER of Virginia and Senator BOB CORKER of Tennessee. They spent a lot of time on this issue, literally going back months on it. We would not be in this position today were it not for their labor and effort.

My colleague from Virginia is on the Senate floor, and he will want to say a few words. I thank Senator SHELBY and our staffs for their efforts. I thank Senator BOXER too. She will have an amendment that strengthens this issue on too big to fail and taxpayers. We have more work to do, but this is a good beginning. I thank Senator SHELBY.

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

Mrs. LINCOLN. Mr. President, first, I rise to speak in support of the Boxer amendment, which sends a strong statement that no taxpayer funds will ever again be used to bail out the risky gambles that too many on Wall Street have conducted. It should pass with 100 votes.

Also, I want to speak about the derivatives title, which is a bipartisan product that was reported out of the Agriculture Committee 2 weeks ago. Specifically, there have been statements in the press and in the Senate Chamber that I believe need to be corrected regarding section 716.

As chairman of the Agriculture Committee, I am proud to have included this provision in the Wall Street reform legislation approved on a bipartisan vote by our committee 2 weeks ago. I am also proud that it is included in the Dodd-Lincoln legislation that we are now considering today.

This provision seeks to ensure that banks get back to the business of banking. Under our current system, there are a handful of big banks that are simply no longer acting like banks. By this time, surely every Member of this body is aware that the operation of risky swaps activities was the spark that lit the flame that very nearly destroyed our economy in this great country.

In my view, banks were never intended to perform these activities, which have been the single largest factor to these institutions growing so large that taxpayers had no choice but to bail them out in order to prevent total economic ruin.

My provision seeks to accomplish two goals: first, getting banks back to performing the duties they were meant to perform—taking deposits and making loans for mortgages, small businesses, and commercial enterprise; second, separating the activities that put these institutions in peril.

This provision makes clear that engaging in risky derivatives dealing is not central to the business of banking. Under section 716, the Federal Reserve and FDIC will be prohibited from providing any Federal assistance and funds to bail out swap dealers and major swap participants.

Currently, five of the largest commercial banks account for 97 percent of the commercial bank national swap activity. That is a huge concentration of economic power, which is why I am in no way surprised that several individuals are seeking to remove it from the bill.

This provision will ensure that our community banks on Main Street would not pay the price for reckless behavior on Wall Street. Community banks are the backbone of economic activity for cities and towns throughout this great land. They don't deal in risky swaps that put the whole financial institution in jeopardy. Instead, they perform the day-to-day business of banking, making the smart, conservative decisions that banking institutions should be making.

Unfortunately, we saw the five largest banks begin to fail in part because of that risky swap activity—activity

that should never have been part of their operation in the first place. Sadly, it was community bankers and their depositors who were left footing the bill.

Community banks were forced to pay for a problem they didn't create. Small banks are still paying that price. In 2009, we saw 140 bank failures, and now the cost of the FDIC insurance premiums are skyrocketing for our community banks all across the country. Higher insurance rates means less lending.

Less lending means that now individuals and small businesses are also paying the price. The FDIC reported that in 2009 the banking industry reduced lending by 7.4 percent, the biggest decrease since 1942.

I am a strong believer that you build an economic recovery from the ground up. If small and medium-sized businesses aren't getting the capital they need to grow their businesses, something is wrong. The economy simply will not recover unless we free up lending.

Unfortunately, Wall Street lobbyists are doing everything they can to distort this provision—spreading misinformation and untruths. The suggestion that this provision will force derivatives into the dark without oversight is absolutely false. The Dodd-Lincoln bill makes it abundantly clear all swaps activity will be vigorously regulated by the Fed, the Commodity Futures Trading Commission, and the Securities and Exchange Commission.

My good friend from New Hampshire, Senator GREGG, my friend from Tennessee, Mr. CORKER, Wall Street lobbyists, and others in recent days have somehow argued that by pushing out risky swaps from the Nation's largest banks, such as J.P. Morgan, Bank of America, Wells Fargo, Goldman Sachs, and Citigroup, somehow swaps will no longer be regulated. This is just plain wrong.

Just because these swaps desks will no longer be overseen by the FDIC does not mean that they will not be subject to this bill's strong regulation by the market regulators—the SEC and the CFTC. In short, they ignore the strong provisions included in the rest of the underlying bill. That is convenient for their argument but not so convenient when seeking the truth.

Let me reiterate: Every swaps dealer and major swaps participant will be subject to strong regulation.

Wall Street lobbyists have also argued that this will prevent banks from using swaps to hedge their risks. Again, that is completely false. Banks that have been acting as banks will be able to continue doing business as they always have. Community banks using swaps to hedge their interest rate risk on their loan portfolio will continue to be able to do so. Most important, we want them to do so. Community banks offering a swap in connection with a loan to a commercial customer are also still in the business of banking and will not be impacted.

Using these products to manage risk or designing exotic swaps which have led to the financial demise of places such as Jefferson County, Alabama; Orange County, California; and the country of Greece are two very different things. Hopefully, this is something my colleagues will understand.

Wall Street lobbyists have also said this provision will move $300 trillion worth of swap activities outside of the banks. My question is, Why is this activity there in the first place? I agree that regulated, transparent swap activity is a necessary part of our economy in managing risk. It just has no place inside a bank where too many innocent bystanders are put at risk.

Despite what those on Wall Street may be saying, this provision is an important part of real Wall Street reform. It has broad support from the Independent Community Bankers of America, the Consumer Federation of America, the AARP, labor unions, and leading economists, such as Nobel Prize-winning Joseph Stiglitz, among others.

Let me read what a few of these groups and individuals are saying about this provision.

Americans for Financial Reform, which includes groups such as the AFL–CIO, NAACP, and Consumers Union, writes:

> The over 250 consumer, employee, investor, community and civil rights groups who are members of the Americans for Financial Reform write to express strong support for section 716 ("Prohibition Against Federal Government Bailouts of Swaps Entities") as part of the Dodd-Lincoln substitute to the Restoring Financial Stability Act of 2010.

It is now almost universally recognized that the fuse that lit the worldwide economic meltdown in the fall of 2008 was the $600 trillion severely undercapitalized and unregulated and opaque swaps market dominated by the world's largest banks. Section 716 is designed to ensure that the American taxpayer is not the banker of last resort, as was true in the bank bailouts in 2008 and 2009, for casino-like investments marketed by large Wall Street swap dealer-banks. Section 716 is a flat ban on Federal Government assistance to "any swap entity," especially in instances where that entity cannot fulfill obligations emanating from highly risky swaps transactions.

By quarantining highly risky swaps trading from banking altogether, federally insured deposits will not be put at risk by toxic swaps transactions. Moreover, banks will be forced to behave like banks, focusing on extending credit in a manner that builds economic strength as opposed to fostering worldwide economic instability.

The Nobel Prize-winning economist and former Chairman of the Council of Economic Advisers during the Clinton administration, Joseph Stiglitz, writes:

> One provision holds particular promise—and has the banks especially riled up. This is the idea that the government should not be responsible for the "counterparty risk"—the risk that a derivatives contract not be fulfilled. It was AIG's inability to fulfill its obligations that led the U.S. Government to step into the breach, to the tune of $182 billion.
>
> The modest proposal of the Agriculture Committee is that the U.S. Government (the Federal Deposit Insurance Corporation) stops underwriting these risks. If banks wish to write those derivatives, they would have to do so through a separate affiliate within the holding company. And if the bank made bad gambles, the taxpayer wouldn't have to pick up the tab.

Here is another from the Independent Community Bankers of America:

> ICBA strongly supports section 106—

Which is a section in our bill—

> of the derivatives bill. This section prohibits federal assistance, including federal deposit insurance and access to the Fed's discount window, to swaps entities in connection with their trading in swaps or securities-based swaps.
>
> Main Street and community banks have suffered the brunt of the financial crisis, a crisis caused by Wall Street players and not community banks. Assessments to replenish the Deposit Insurance Fund have increased dramatically for community banks. Large financial players have received hundreds of billions in financial assistance while community banks have been allowed to fail.
>
> Section 106 of Senator Lincoln's derivatives legislation would be an important provision to help ensure that taxpayers and community banks are not on the chopping block should another financial crisis occur. We strongly urge retention of this provision during markup this week. Thank you for keeping the views of the community bankers in mind.

I ask unanimous consent to have printed in the RECORD these three letters from the Americans for Financial Reform, Professor Stiglitz, and the Independent Community Bankers.

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

AMERICANS FOR FINANCIAL REFORM,
Washington, DC, May 3, 2010.

U.S. SENATE,
Washington, DC.

Re Letter of support for the Prohibition against Federal Government Bailouts of Swaps Entities.

DEAR SENATOR: The over 250 consumer, employee, investor, community and civil rights groups who are members of Americans for Financial Reform (AFR) write to express strong support for Section 716 ("Prohibition Against Federal Government Bailouts of Swaps Entities") as part of the Dodd-Lincoln substitute to the Restoring Financial Stability Act of 2010. It, along with other structural reforms under consideration such as a statutory Volcker Rule and limits on bank size and leverage (the Merkley-Levin and Brown-Kaufman amendments), will sharply reduce the possibility of taxpayer bailouts for speculative activity that does not serve the real economy.

It is now almost universally recognized that the fuse that lit the worldwide economic meltdown in the fall of 2008 was the $600 trillion, severely under-capitalized and unregulated and opaque swaps market, dominated by the world's largest banks. Section 716 is designed to ensure that the American taxpayer is not the banker of last resort, as was true in the bank bailouts in 2008–2009, for casino-like investments marketed by large Wall Street swap dealer-banks. Section 716 is a flat ban on federal government assistance to "any swap entity," especially in instances where that entity cannot fulfill obligations

emanating from highly risky swaps transactions. Specifically, Section 716 bars ''advances from any Federal Reserve credit facility, discount window . . . or [loan or debt guarantees by the] Federal Deposit Insurance Corporation.''

Section 716 will require, inter alia, the five largest swaps dealer banks to sever their swaps desks from the bank holding corporate structure. Those five banks are: Goldman Sachs, Morgan Stanley, J.P. Morgan Chase, Citigroup, and Bank of America, the institutions involved in well over 90 per cent of swaps transactions. Under Section 716 a ''swap entity'' and a banking entity could not be contained within the same bank holding company, if the bank holding company has access to federal assistance.

By quarantining highly risky swaps trading from banking altogether, federally insured deposits will not be put at risk by toxic swaps transactions. Moreover, banks will be forced to behave like banks, focusing on extending credit in a manner that builds economic strength as opposed to fostering worldwide economic instability. Finally, the spun off swaps entity will be sufficiently isolated to permit the kind of careful prudential oversight mandated by Title VII of the Act as a whole. Title VII ensures that the spun-off entities will both be regulated as institutions under the most rigorous prudential standards, and that almost all of the swaps instruments will be subject to standards for capital adequacy, full transparency, anti-fraud and anti-manipulation.

We understand that the largest banks which are the major dealers and their allies are arguing that taking swaps trading out of the banks will raise the price of hedging for customers and reduce market liquidity. They are wrong. Purely speculative financial derivatives now represent $78 for every $1 in true hedging by businesses and farmers. Regulation that reduces de-stabilizing speculative hedging will actually benefit legitimate commercial hedgers. The ''cost argument'' promulgated by the ''Too Big to Fail'' banks begs the question: why does attaching derivatives desks to our large banks result in cheaper derivatives products? The co-mingling of derivatives desks and other banking activities produces the formerly implicit, and now all-too-explicit, guarantee of the federal taxpayer. In the current high-risk environment, availability and pricing for hundreds of trillions of dollars in swaps can be maintained only if counterparties are assured that the Fed's backup liquidity will continue. On their own, these banks cannot create the liquidity that a market with such high levels of risk would require to sustain a disruption. That is why the banks must not be allowed to continue to deal in risky transactions that threaten deposits, the taxpayer backstop, and banks' core lending function.

Opponents of Sec. 716 also argue that it will force swaps activity into non-regulated entities or into the overseas market. The Europeans' experience with credit default swaps on Greece's government debt suggests that no central bank going forward will want to face this level of risk to its banking systems. There is every indication that the G–20 countries and many other sovereigns are prepared to constrain reckless and abusive swaps activity. The idea that systemically risky swaps-trading will migrate abroad is belied by the hostility to such trading by, for example, the European Commission and other G–20 countries. In the wake of the havoc on the Euro wrought by currency and credit default swaps, the European Commission is not eager to leave these instruments unregulated.

Section 716 is critical to ending our ''too interconnected to fail'' economy. We ask that you support the bill, and oppose any attempts to weaken Section 716 or to widen any loopholes in the derivatives title of the bill. Please contact Lisa Lindsley, Director, Capital Strategies, AFSCME, for more information.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

INDEPENDENT COMMUNITY BANKERS OF AMERICA,
Washington, DC, April 19, 2010.

Hon. CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

Hon. RICHARD C. SHELBY,
Ranking Member, Committee on Banking, Housing and Urban Affairs, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN DODD AND SENATOR SHELBY: I am writing to you on behalf of the Independent Community Bankers of America, an association of 5,000 community banks across the nation. We believe that the recent financial crisis has demonstrated the urgent need for a new system to resolve large, interconnected financial firms before they create widespread damage to the financial system. A robust resolution mechanism must include an adequate resolution fund that would allow for the rapid, orderly takeover and wind down of the largest financial firms. Properly constructed, the fund would help shield both the U.S. taxpayer and community banks from the consequences of a large firm failure.

Further, prefunding the fund is vitally important to the speed with which resolution must be effected in order to prevent contagion and to ensure that the cost of resolution is borne by the Too-Big-To-Fail firms, including hedge funds and insurers, that create risk for our financial system, not by taxpayers or community banks.

The resolutions facilitated by this fund should not be characterized as ''bailouts''; rather, they would be orderly liquidations in which management would be removed and shareholders and unsecured creditors would be wiped out. The fund would function in much the same way the FDIC's Deposit Insurance Fund (DIF) has functioned since 1930s, allowing the FDIC to regularly close banks and protect insured depositors while terminating senior management without compensation and imposing losses on stockholders and uninsured creditors.

The DIF is funded by banks through deposit insurance premiums, and has allowed the FDIC to weather financial crises without resorting to a taxpayer bailout. Because the DIF is prefunded, the failed banks as well as the survivors share the costs. Without a fund, the survivors, the prudent investors, pay for the profligate. This is not a model we subscribe to.

The Dodd bill would create a $50 billion prefunded ''orderly liquidation fund'' and would prohibit any assistance to stockholders or unsecured creditors of large financial firms. Both of these elements are critical to ending Too-Big-to-Fail. Without an obvious source of funds to effect the orderly unwinding of these large firms, rational investors and creditors will conclude that in a crisis the government will blink and again guarantee large failing firms. This will confer a competitive advantage on the large firms in the form of cheaper debt and equity funding, which they will use to steadily acquire more and more business customers, to the detriment of small banks. Further, the lack of effective resolution authority will undoubtedly encourage these large firms to take on excessive risk once again, without the pain that should accompany such risks.

To level the financial and regulatory playing field we need to have the ability impose losses on the stock and bond holders of the giants of finance in ways similar to those applied to ninety-nine percent of smaller banks.

Every Friday, Community banks face the market discipline imposed by an orderly wind down by the FDIC and its industry funded deposit insurance fund. Let's level the playing field and subject our biggest and riskiest institutions—the ones that caused this economic catastrophe we are just now digging out from—to the same discipline.

As a further means of protecting taxpayers and community banks from the risky activities of unregulated players, we strongly support a provision of Chairman Lincoln's derivatives bill that would protect the DIF. Section 106, the ''Prohibition against Federal Government Bailouts of Swaps Entities,'' prohibits federal assistance (including federal deposit insurance, and access to the Federal Reserve discount window) to swaps entities in connection with their trading in swaps or securities-based swaps. This provision is targeted at the AIGs of the world—both large and small—whose swaps activities played a key role in triggering the credit crisis and subsequent economic downturn and resulted in over $180 billion in taxpayer assistance. Our support for the Dodd prefund and for Section 106 of the Lincoln bill are borne out of the same concern.

The cost of the financial crisis has been huge for Main Street and community banks and our nation. Both the Dodd and the Lincoln provisions will go a long way toward ensuring that the costs of any future crisis—should we be so unfortunate—are borne by the reckless parties who brought it about.

Sincerely,

CAMDEN R. FINE,
President & CEO.

PROTECT TAXPAYERS FROM WALL STREET RISK

(By Joseph E. Stiglitz)

CNN.—As legislators continue to trade loud barbs over the details of the bill that seeks to overhaul our financial system, we risk losing a crucial aspect of reform in the din.

We now have an important opportunity to fix the regulation of derivatives—those controversial mechanisms that played a central role in the downfall of insurance giant AIG, and helped spark the Great Recession.

The current finance bill contains reasonable proposals, developed by the Senate agriculture committee, under the leadership of Blanche Lincoln, that would rein in the most egregious abuses of these instruments.

The AIG experience should have made clear that derivatives can create enormous risks—risks that ended up being borne by taxpayers. In addition, derivatives have played an important role in all kinds of nefarious activities—from trying to obfuscate Greece's real financial position, to vast tax evasion.

Derivatives are not inherently bad. They can play a positive role in risk management, but they are only likely to do that if there is the right regulatory framework.

Without the appropriate legal and regulatory framework, they will almost surely contribute, on balance, to the creation of risk—as they did in this crisis, and as they did a decade ago in the infamous Long-Term Capital Management bailout.

The provisions reported out of the agriculture committee are an important step in the right direction. But derivatives have been an enormous profit center for a few big banks (about $20 billion last year), so we should not be surprised that there is resistance to anything that is a real change to the status quo.

Derivatives have been advertised as an ''insurance product,'' insuring bondholders, for instance, against the risk of a loss. But if they were really insurance products, they should have been regulated as insurance, with insurance regulators making sure that there was adequate capital to meet their obligations.

In reality, in many cases derivatives are more accurately described as gambling instruments. But gambling should be subject to gaming laws, and derivatives aren't.

Remarkably, in fact, derivatives have been left totally unregulated—a mistake that President Clinton, who failed to introduce regulations when he had the chance, now acknowledges. Congress's current proposal is the opportunity to rectify that mistake.

One provision holds particular promise—and has the banks especially riled up. This is the idea that the government should not be responsible for the ''counterparty risk''—the risk that a derivatives contract not be fulfilled. It was AIG's inability to fulfill its obligations that led the U.S. government to step into the breach, to the tune of some $182 billion.

The modest proposal of the agriculture committee is that the U.S. government (the Federal Deposit Insurance Corporation) stop underwriting these risks. If banks wish to write derivatives, they would have to do so through a separate affiliate within the holding company. And if the bank made bad gambles, the taxpayer wouldn't have to pick up the tab.

This change would help fix the current system, where those who buy this so-called ''insurance'' enjoy the subsidy of the essential, free government guarantee; and where competition among the few issuers of these risky products is sufficiently weak that they enjoy high profits.

This arrangement is economically inefficient—firms should pay for the costs of their insurance. If the government guarantee is removed, the banks might have to put more money into their derivatives subsidiaries. This will reduce the banks' profitability, and it might force up prices of this ''insurance.'' But that is as it should be. The government shouldn't be subsidizing ''insurance''—and it certainly shouldn't be in the business of subsidizing gambling.

The Fed and the Treasury seem to object to the agriculture committee's proposals. These objections show once again the extent to which the Fed and the Treasury have been captured by the institutions that they are supposed to regulate, and reemphasize the need for deeper governance reforms of the Fed than those on the table.

To be sure, banks' high profits from derivatives would help with recapitalization, offsetting the losses they incurred from the risky gambles of the past. But that doesn't mean that the policy of allowing banks to issue derivatives—and laying the risk of failure onto the taxpayer—is right.

Bank recapitalization should be done in an open and transparent way, consistent with sound economic principles. Abusive credit card practices could also help recapitalize the banks, but fortunately we have curtailed some of these. We should now do the same for derivatives.

We should recognize that the agriculture committee provision is already a compromise. Many worry that if the affiliate within the holding company that writes the derivatives gets into trouble, Uncle Sam will still come to the rescue.

The bill, for instance, includes a ''strong presumption'' of losses for creditors and shareholders. What should be required is that creditors (other than depositors) and shareholders bear all the losses before the government is asked to pony up any money. But ultimately, in a crisis, worries about the consequences of such strong medicine will almost surely mean a bailout for the bank holding companies as well as the banks—as happened in this crisis.

In a crisis, the government will not only bail out the banks, but also the bankers, their shareholders, and their bondholders—if not totally, at least partially.

So if we are to protect American taxpayers, we must also bar any too-big-to-fail institutions from writing derivatives.

But right now, the institutions who write the vast majority of these derivatives are too big to fail. Ideally, responsibility for writing derivatives should be spun out to a totally independent entity. The agriculture committee bill does not go this far; rather, it strikes a reasoned compromise between political expediency and economic good sense.

It would be a major mistake to walk away from this compromise by allowing FDIC-insured institutions to continue to write these risky products. To allow them to do so would simply generate more political cynicism: It would show that the big banks have succeeded in their ambition of returning to the world nearly as it was before the crash.

Mrs. LINCOLN. Mr. President, I look forward to working with my colleagues to ensure this legislation remains strong and new loopholes are not created on behalf of Wall Street.

This is a legislative body. It is designed for debate, and I welcome that debate and welcome the debate of my colleagues in terms of what we are trying to do here.

We have seen a historic economic crisis. Banks no longer look like banks, and for people in my hometowns across Arkansas, that is a frightening thing. The status quo is certainly not acceptable.

We all have to look at what it is we can do to come together with some type of assurance and confidence for the people of our States that we are not going to let the status quo remain. I believe we need to take the necessary steps to create that confidence for investors and consumers that what we experienced will not be able to happen again; that these financial entities cannot become so big that they cannot fail or that we would not allow them to fail or, worst of all, that taxpayers will have to bail them out again.

I say to my colleagues, I am a very pragmatic person, pretty simplistic in what it is I want to achieve and what we have worked to achieve. I hope all of my colleagues will continue to work together to find out what it is we can responsibly hand to the people of this great country and say to them: We not only have seen what has happened, but we are going to dare to produce something that will ensure it does not happen again. As I said, working in a pragmatic way, I think we can come up with a good, strong piece of legislation, that all of us—Democrats and Republicans, no matter what regions of the country we come from—will actually say to the American people: We saw what happened, and we are going to make sure it does not happen again.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

Mr. DODD. Mr. President, I thank our colleague, the chairperson of the Agriculture Committee, for her work and the work of her staff and others and for her statement today inviting all of us to be involved in this process. I commend her. I thank her for the fine work.

I am going to propose a unanimous consent request that has been cleared by our respective leaders.

Mr. President, I ask unanimous consent that at 2:45 p.m. today, the Senate proceed to executive session to consider the following calendar numbers: 728, 701, and 702; that prior to each vote, there be 2 minutes of debate equally divided and controlled in the usual form; that upon confirmation of the nominations, the motions to reconsider be considered made and laid upon the table en bloc; that the President be immediately notified of the Senate's action; that the Senate then resume legislative session; that upon resuming legislative session, there be 4 minutes of debate prior to a vote in relation to the Boxer amendment No. 3737; that upon disposition of the Boxer amendment, the Senate then proceed to a vote in relation to the Shelby-Dodd amendment, which is at the desk, with 4 minutes of debate prior to a vote in relation to the amendment, with all time divided in the usual form, with no amendments in order to the amendments covered in this agreement, prior to a vote in relation thereto; further, that the Senate then consider en bloc the Snowe amendments Nos. 3755 and 3757, with no further debate in order with respect to the Snowe amendments and with no amendments in order to the Snowe amendments; that the next amendments in order be one from the Republican leader or his designee regarding consumer protection, and the Tester-Hutchison amendment No. 3749.

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

Mr. DODD. Mr. President, I see two of my colleagues who have been deeply involved. I mentioned them earlier in their absence. I thank Senator CORKER and Senator WARNER for their hard work. As I said, this goes back months, title I and title II of the bill. I have thanked them a lot already. They put in a tremendous amount of time with an awful lot of people on how best to draft this legislation. Everybody always has ideas and thoughts about all of it. I am grateful to both of them for their tireless efforts, and their staffs.

I yield the floor so each can comment.

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

Mr. CORKER. Mr. President, I thank the Senator from Connecticut. I will be brief.

My friend from Virginia, MARK WARNER, is here. Senator DODD and Senator SHELBY allowed us to work on this portion of the bill. I thank Senator WARNER for being such a great partner.

One of the things you learn around this body very quickly is you certainly

do not end up getting everything the way you would like. I thank both Senator SHELBY and Senator DODD for the way they have worked together over the last week or so to improve this bill.

Look, I think Senator WARNER and I—I will speak for myself. Obviously, there are pieces I wish were a little different. I wish the length of receivership was not 5 years but that it was a much shorter period to wind these companies down more quickly. I wish we had judicial review so if a company is placed into this type of resolution, they actually have the opportunity to have that reviewed in a much better way. We have a bankruptcy court title. I know Senator SHELBY, Senator WARNER, and others would like to see that happen. I am hoping over the course of the amendment process that will happen. Judicial review of claims—I wish that were occurring. I know that is not part of this title. I also wish there was judicial review of the valuation process. There are a number of provisions I wish were better, but I will say that I think the work Senator DODD and Senator SHELBY have done to date is good. I plan to support this.

I say to my colleagues on this side of the aisle who want the bankruptcy process to be the process, I think they should still support what Senator DODD and Senator SHELBY have done because they have tightened this resolution title to make it much better.

I defer to my friend from Virginia because I know he is going to talk about aspects of this bill that are not talked about much. They are preventive measures—at least of this title—to keep us from being in a situation where resolution is even necessary because of precautionary issues that are put in place.

I thank Senator DODD and Senator SHELBY. I thank them for their involvement. I thank them for the way they have worked together to make this bill better with the process that has taken place over the last week.

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

Mr. WARNER. Mr. President, let me follow on my colleague's comments. He is my colleague and my friend and my partner for the last year. I think we've both, as former business guys, said this is not an issue that should be partisan. We need to check our ''D'' and ''R'' hats at the door and find a way to sort through a new set of financial rules so we never have to face what we faced in 2008.

I think some of the original approaches that we had might have been tighter. I know we talked a little bit off the floor about the notion that actually some of the borrowing authority that now exists might be larger than what we had initially proposed. But at the end of the day, what is important is that, one, the taxpayers are protected—and that is what the Shelby-Dodd approach has; it has no recoupment from the financial industry—and two, to make sure there is money to wind these firms down in an orderly fashion.

We have seen with Lehman, a year and a half after the fact, literally hundreds of millions, close to billions of dollars, that are being used to unwind. That process takes time and money. I again share the concern of the Senator from Tennessee that we ought to do this in as limited time as possible.

Let me take 2 more quick minutes and say that, if we have done our job right, we are never going to have to get to resolution because bankruptcy should always be the preferred process.

We have put the appropriate speed bumps on these firms that become large and systemically important: higher capital requirements, better review of their leverage, making sure they have good risk management plans. And we have created two new tools that have not gotten any discussion but I know, in our hundreds of meetings we had, kept coming back time and again. One was the creation of a whole new set of capital that would convert from debt into equity if a firm ever gets into a problem. And second, a funeral plan that has to be blessed by the regulator that would show how these large firms, particularly firms with international operations all around the world, can wind themselves down through bankruptcy. If the plan is not approved, the regulators can take more dramatic action.

I think the heart and soul of our challenge, which has been to end too big to fail and make sure taxpayers were not exposed, has been accomplished. I thank the chairman and Ranking Member SHELBY for their work on this. I look forward to support this—and I look forward to support this amendment as well.

I want to conclude with my thanks to my colleague and friend from Tennessee. I think we did check our hats and put a business approach on trying to get these titles right, and I agree with his comments that we appreciate any improvements made by both the chairman and the ranking member. I look forward to supporting this part of the legislation and I hope we can continue to work through on the balance of the titles in this same way.

I thank the Chair.

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

Mr. REID. Mr. President, I ask unanimous consent to use my leader time right now.

First, I want to express my appreciation to Senators WARNER and CORKER for working to improve this bill. They are very fine Senators. My friend, the Senator from Virginia, Senator WARNER, has been such a great addition to the caucus, the Senate, and the country. His experience as Governor of the State has served him well. He does a wonderful job for the people of Virginia and, of course, our country.

EXECUTIVE SESSION

NOMINATIONS OF GLORIA M. NAVARRO TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEVADA; NANCY D. FREUDENTHAL TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF WYOMING; DENZIL PRICE MARSHALL, JR. TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider nominations which the clerk will report.

The legislative clerk read the nomination of Gloria M. Navarro, of Nevada, to be United States District Judge for the District of Nevada; Nancy D. Freudenthal, of Wyoming, to be United States District Judge for the District of Wyoming; and Denzil Price Marshall, Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

Mr. REID. Mr. President, it is my understanding there is a consent agreement now in effect that has three votes for three judges, and then two other matters related to the banking bill; is that true?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. REID. I ask unanimous consent that agreement be modified to have the first vote be 15 minutes and the next four 10-minute votes.

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

NOMINATION OF GLORIA M. NAVARRO

Mr. REID. Mr. President, I will say a few words about the first vote we are going to have today.

I am very happy I had the opportunity and the privilege to nominate Gloria Navarro to be a Federal judge for the District of Nevada. What a wonderful addition she will be to the Federal Judiciary. She has a number of outstanding qualities.

First, she is such a fine human being. She has a wonderful family—a husband who supports her entirely in this terrifically important job she is going to take. He is an accomplished lawyer himself. She has wonderful children and a mom who supports her. She is a Nevadan who has been educated in the Nevada school system. She has attended some of the finest universities in the country—the University of Southern California and Arizona State.

In my interviews with her, I was very impressed. She has proven throughout her personal and professional life that she embodies the values of our country—hard work, discipline, and respect for the rule of law. I have been impressed time and time again by this Nevadan's record and her commitment to public service in all areas of her life. She has worked for two decades in both

the private and public sectors and has experience in every aspect of the law—complex litigation at both the Federal and State levels; murder cases.

She is currently the chief deputy district attorney in the Office of County Counsel, providing legal counsel and litigation defense to the Clark County Board of Commissioners. She has worked as a public defender, and in 2002 she received the Nevada State Bar Access to Justice Pro Bono Public Lawyer of the Year award. She has also worked in private practice, representing clients in Federal and State litigation relating to criminal, civil, and family law. In 2001, she was awarded the very prestigious Louis Wiener Pro Bono Service Award.

She is committed to the State of Nevada. She is committed to her community. Among other things, as president of the Latino Bar Association, she created a mentoring program pairing high school, college, and law school students with community lawyers.

It is my pleasure to have recommended her to be a judge, and everyone can rest assured that she will do an outstanding job for the people of Nevada in dispensing fair, equal justice under the law.

Mr. LEAHY. Mr. President, Senate Republicans have not allowed the Senate to act on a judicial nominee for almost 2 weeks. They have continued to stall the almost two dozen judicial nominees reported favorably by the Senate Judiciary Committee, dating back to last November. These 23 judicial nominees awaiting final Senate action include 17 who were reported without any negative votes. That is right—Senate Republicans continue to block Senate consideration and confirmation of nominees, including judicial nominees, who are not only going to be confirmed, but will likely be confirmed unanimously.

The majority leader has had to file cloture petitions to cut off the Republican stalling by filibuster votes on President Obama's nominees 22 times. Twice he has had to file cloture to proceed with judicial nominees, only to eventually see those nominees confirmed unanimously. This stalling and obstruction is wrong.

Senator WHITEHOUSE, Senator MCCASKILL, and a number of other Senators have taken up the cause against these delays and secret holds. I thank them. They made live requests for action on the Senate floor to bring these matters into the light. Regrettably, those Republican Senators who had objected did not come forward to identify themselves or the reasons for their objections in accordance with Senate rules.

By this date in George W. Bush's Presidency, the Senate had confirmed 52 Federal circuit and district court judges. As of today, only 20 Federal circuit and district court confirmations have been allowed by Senate Republicans. As I have noted there remain another two dozen additional judicial nominations stalled before final Senate action by Republican obstruction. It should not take 2 weeks to work out time agreements on three noncontroversial nominees. Nominees reported without a single negative vote in committee should not be stalled for months for no good reason.

Despite the fact that President Obama began sending judicial nominations to the Senate 2 months earlier than President Bush, the Senate is far behind the pace we set during the Bush administration. In the second half of 2001 and through 2002 the Senate confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction this Senate may not achieve even half of that. Last year the Senate was allowed to confirm only 12 Federal circuit and district court judges all year. That was the lowest total in more than 50 years. Meanwhile, judicial vacancies have skyrocketed to more than 100, more than 40 of which have been declared to be ''judicial emergencies'' by the Administrative Office of the U.S. Courts.

There is no explanation or excuse for what continues to be a practice by Senate Republicans of secret holds, and a Senate Republican leadership strategy of delay and obstruction of this President's nominations. That is wrong.

Throughout the past month, a number of Senators have come before the Senate to discuss this untenable situation and to ask for consent to proceed to scores of noncontroversial nominations. Republicans objected anonymously and without specifying any basis whatsoever.

These long delays unfortunately continue to be part of a pattern of Republican obstructionism that we have seen since President Obama took office. In a dramatic departure from the Senate's traditional practice of prompt and routine consideration of noncontroversial nominations, Senate Republicans have refused month after month to join agreements to consider, debate and vote on nominations. This unprecedented practice has led to a backlog of nominations and a historically low number of judicial confirmations.

We should restore the Senate's tradition of moving promptly to consider noncontroversial nominees pending on the calendar, with up-or-down votes in a matter of days, not weeks, and certainly not months. For those nominees Republicans wish to debate, we should come to agreements for when to have those debates and votes. It should not take cloture in order for the Senate to get its work done and fulfill its constitutional advice and consent responsibilities.

I, again, urge the Senate Republican leadership to abandon its destructive delaying tactics and allow the Senate to act on the backlog of nearly two dozen judicial nominees reported by the Senate Judiciary Committee over the last 6 months that they have stalled for no good purpose.

The three nominations we consider today should have been confirmed months ago, and I predict will each be confirmed overwhelmingly. Nancy Freudenthal has been nominated to fill a vacancy on the District of Wyoming. She has decades of experience as a public servant and a lawyer in private practice, and she currently serves as Wyoming's First Lady. Ms. Freudenthal has been rated ''well qualified'' by the American Bar Association's, ABA, Standing Committee on the Federal Judiciary and, when confirmed, she will be that state's first female Federal judge. The Judiciary Committee favorably reported Ms. Freudenthal's nomination by voice vote without dissent on February 11—nearly 3 months ago—and her nomination has the support of both of Wyoming's Republican Senators, Senator ENZI and Senator BARRASSO.

Judge D. Price Marshall has been nominated to fill a vacancy on the Eastern District of Arkansas. The Judiciary Committee also favorably reported his nomination by voice vote without dissent nearly 3 months ago, on February 11. Judge Marshall is currently a well-respected judge on the Arkansas Court of Appeals, and he spent 15 years in private practice in Jonesboro, Arkansas. He also served as a law clerk to Seventh Circuit Judge Richard S. Arnold. Judge Marshall has earned the highest possible rating, unanimously ''well qualified'' from the ABA Standing Committee, and he has the strong support of both of his home State Senators, Senator PRYOR and Senator LINCOLN.

Gloria Navarro has been nominated to serve as a Federal district court judge in Nevada. The Judiciary Committee reported her nomination by voice vote without dissent 2 months ago, on March 4. When the Senate finally confirms her, Ms. Navarro will become the only woman, and the only Hispanic, on the Nevada district court. Ms. Navarro, who has been rated ''qualified'' by the ABA's standing committee has gained valuable experience as a chief deputy district attorney in Clark County, NV, as a public defender and as a lawyer in private practice. Her nomination has the support of both of her home State Senators, Senator REID and Senator ENSIGN.

The three judicial nominees the Senate considers today have each been stalled by Republican objection for months. Each has the support of his or her home State Senators. In one case, that is two Republican Senators, in another that is two Democratic Senators, and in the third case that is one Democratic Senator and a Republican Senator. Each of these confirmations is long overdue. I congratulate the nominees and their families on their confirmations today.

I urge the Republican leadership to agree to prompt consideration of the additional 20 judicial nominees they continue to stall.

The ACTING PRESIDENT pro tempore. Is there any debate in opposition to the nomination?

If not, the question is, Will the Senate advise and consent to the nomination of Gloria M. Navarro, of Nevada, to be United States District Judge for the District of Nevada?

Mr. REID. I ask for the yeas and nays.

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

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 128 Ex.]

YEAS—98

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

NOT VOTING—2

Bennett	Byrd

The nomination was confirmed.

NOMINATION OF NANCY D. FREUDENTHAL

The PRESIDING OFFICER. There will now be 2 minutes of debate, evenly divided, on the nomination of Nancy D. Freudenthal, of Wyoming, to be U.S. circuit judge.

Mr. ENZI. Mr. President, I am pleased to rise in support of the nomination of Nancy Freudenthal to serve as a judge for the U.S. District Court for the District of Wyoming. I want to thank Chairman LEAHY and Senator SESSIONS and the Judiciary Committee staff for their assistance moving this nomination through the process.

Nancy is a Wyoming native, born in Cody, and received both her B.A. and her J.D. from the University of Wyoming.

After being admitted to the Wyoming State Bar in 1980, Nancy took a position with Governor Ed Herschler as his attorney for intergovernmental affairs for 8 years. She then served in the same position for Governor Mike Sullivan for 2 years. In this capacity, Nancy served as the Governor's representative on numerous boards, worked extensively with the State legislature, taught at the University of Wyoming College of Law, and served as acting administrator of the Department of Environmental Quality in the Land Quality Division.

In 1989, Nancy was appointed by Governor Sullivan to the Wyoming Tax Commission and State Board of Equalization, where she served as Chairman for a 6-year term. While the State board of equalization is tasked with the annual process of equalizing valuation of property in Wyoming counties, the board has a main function of listening to disputes between taxpayers and the Department of Revenue and reviewing appeals. Nancy's experience as chairman of this board will greatly enhance her abilities as a judge.

Since joining Davis & Cannon, LLP in 1995, Nancy has handled a wide variety of matters, including complex mineral tax litigation, environmental and natural resource disputes, public utility law, oil and gas litigation, employment litigation, and commercial transactions. She has experience at both the trial and appellate levels. Nancy is well respected among her peers and judges in Wyoming.

I also want to mention how important this judgeship is for Wyoming. While Senators disagree at times about specific nominees, we can all agree that without judges in place our legal system slows down and does a disserve to the people we represent.

Nancy Freudenthal's experiences as a private attorney and in State government will serve her well as a district court judge. I am pleased that her nomination has received the strong support of my Senate colleagues.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I will support this nominee, but I should mention again that Senate Republicans have not allowed us to vote on a judicial nominee for almost 2 weeks.

By this date in George W. Bush's Presidency, the Senate had confirmed 52 Federal circuit and district court judges. As of today, we had only been allowed only 20 by the Senate Republicans. Counting the recent vote on Gloria M. Navarro this brings us just up to 21 confirmations.

There are nearly two dozen additional nominations stalled. It should not take 2 weeks to try to get through these secret holds. When we have people who are confirmed unanimously in the committee, then confirmed unanimously on the floor, it is unconscionable to hold them up week after week after week.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I am rising in support of the nominee. Any delays that there have been have not been for this particular nominee, nor by the Wyoming delegation at all.

This is a position that has been open now for over 2 years. The first nominee for this position got a hearing but could not get a vote in committee. The nomination ran out and we now have a new nominee, who is Mrs. Freudenthal, Nancy Freudenthal, who is also the first lady of Wyoming.

But she, in her own right, has been an attorney, has served with three different Governors in the State of Wyoming, and does a phenomenal job. She has her law degree from the University of Wyoming and would make an outstanding person to fill in this roll. Both Senator BARRASSO and I are strongly in support of her and have been pushing for her nomination since we first started.

Mr. LEAHY. Would the Senator yield? The Senator is absolutely right. The Wyoming Senators did not hold up this nominee, but the Republican side did.

Mr. ENZI. Mr. President, the Republican side may have been doing things to be sure we had votes on judges, which is the same thing the Democrats did when we were in the majority. We had to have votes on all these. I am glad we finally got to the position of having a vote.

The PRESIDING OFFICER. Time has expired.

Mr. ENZI. I ask everyone to vote aye. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The question is, Will the Senate advise and consent to the nomination of Nancy D. Freudenthal, of Wyoming, to be U.S. district judge for the District of Wyoming?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

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

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 129 Ex.]

YEAS—96

Akaka	Casey	Grassley
Alexander	Chambliss	Gregg
Barrasso	Cochran	Hagan
Baucus	Collins	Harkin
Bayh	Conrad	Hatch
Begich	Corker	Hutchison
Bennet	Cornyn	Inhofe
Bingaman	Crapo	Inouye
Bond	DeMint	Isakson
Boxer	Dodd	Johanns
Brown (MA)	Dorgan	Johnson
Brown (OH)	Durbin	Kaufman
Brownback	Ensign	Klobuchar
Bunning	Enzi	Kohl
Burr	Feingold	Kyl
Burris	Feinstein	Landrieu
Cantwell	Franken	Lautenberg
Cardin	Gillibrand	Leahy
Carper	Graham	LeMieux

Levin	Nelson (FL)	Specter
Lieberman	Pryor	Stabenow
Lincoln	Reed	Tester
Lugar	Reid	Thune
McCain	Risch	Udall (CO)
McCaskill	Roberts	Udall (NM)
McConnell	Rockefeller	Vitter
Menendez	Sanders	Voinovich
Merkley	Schumer	Warner
Mikulski	Sessions	Webb
Murkowski	Shaheen	Whitehouse
Murray	Shelby	Wicker
Nelson (NE)	Snowe	Wyden

NAYS—1

Coburn

NOT VOTING—3

Bennett	Byrd	Kerry

The nomination was confirmed.

NOMINATION OF DENZIL PRICE MARSHALL, JR.

The PRESIDING OFFICER. There will now be 2 minutes of debate equally divided on the nomination of Denzil Price Marshall Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas.

The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, I am so pleased to rise in support of Judge Price Marshall who has been nominated to fill the Federal judicial vacancy in the Eastern District of Arkansas.

Judge Marshall has enjoyed an impressive and lengthy legal career in Arkansas, where he has served as a judge on the Arkansas Court of Appeals since 2006.

Previously, Judge Marshall practiced law in his hometown of Jonesboro, for 15 years, as a principal at the firm Barrett & Deacon. He also clerked for U.S. Circuit Judge Richard Arnold from 1989 to 1991.

He graduated from Arkansas State University in Jonesboro in 1985, where he currently serves as an adjunct professor of political science.

Judge Marshall also received a degree from the London School of Economics, and graduated with honors from Harvard Law School in 1989.

He has done a tremendous job. He is very well known in Arkansas as a gifted appellate advocate, brilliant legal mind, and well-respected man of integrity. I am so pleased the Senate is taking the role of moving him forward in this capacity. I thank Chairman LEAHY and the Judiciary Committee for moving the nomination forward. I have full faith and confidence in Judge Marshall's ability and encourage Members to support him.

I yield to my colleague from Arkansas.

Mr. PRYOR. Mr. President, I don't think it is an exaggeration to say that when our Founding Fathers laid out article III of the Constitution, they had people such as Price Marshall in mind. He is smart. He is hard-working. He is a family man. He is involved in his community. He is involved in his church and in his legal profession. He is an elected member of the Arkansas Court of Appeals. When he was in private practice, he had a reputation as a lawyer's lawyer. I join Senator LINCOLN in giving him my highest recommendation.

I appreciate all my colleagues voting yes on Price Marshall.

The PRESIDING OFFICER. All time is yielded back.

The question is, Will the Senate advise and consent to the nomination of Denzil Price Marshall, Jr., of Arkansas, to be United States District Judge for the Eastern District of Arkansas?

The nomination was confirmed.

The motion to reconsider is considered as made and tabled.

The President shall be notified of the Senate's action.

● Mr. KERRY. Mr. President, I was necessarily absent for the votes on the nomination of Nancy D. Freudenthal to be U.S. District Judge for the District of Wyoming and Denzil Price Marshall Jr. to be U.S. District Judge for the Eastern District of Arkansas. If I were able to attend today's session, I would have supported both nominees.●

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will resume legislative session.

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

AMENDMENT NO. 3737

The PRESIDING OFFICER. There is now 4 minutes of debate equally divided prior to a vote on the Boxer amendment.

The Senator from California.

Mrs. BOXER. Mr. President, I would like everyone to take a look at these headlines from September 2008: ''Nightmare on Wall Street, Where Do We Go From Here?'' All of us who went through this, whether we were in the Senate or we were looking at what was happening to our investments on Wall Street, we saw over 3 short days in September of 2008, Lehman Brothers, Merrill Lynch, and AIG collapsed and the stock market plunged. Seniors lost their retirement savings, and families lost their jobs and homes. Small businesses stopped hiring. It was a nightmare. That is what it was. If there is one thing we should all be able to agree on, it is this: The American taxpayer should never again have to bail out Wall Street firms that gambled away our savings and wreaked havoc on our economy.

My amendment is very clear. It is not a sense of the Senate. It has the force of law. It is straightforward. It is an ironclad assurance that a failing, insolvent Wall Street firm must be liquidated, and the cost of that liquidation must come either from selling off the firm's assets or from industry assessments of the big Wall Street firms.

I will retain the remainder of my time in case there is a debate. I hope this is close to a unanimous vote. It is clear, and I hope we will agree.

I retain the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I yield back the time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The question is on agreeing to the amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KERRY would vote ''yea.''

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

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

The result was announced—yeas 96, nays 1, as follows:

[Rollcall Vote No. 130 Leg.]

YEAS—96

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

NAYS—1

Kyl

NOT VOTING—3

Bennett	Byrd	Kerry

The amendment (No. 3737) was agreed to.

Mr. DODD. I move to reconsider the vote.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

AMENDMENT NO. 3827 TO AMENDMENT NO. 3739

Mr. SHELBY. Mr. President, I call up my amendment, which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY], for himself and Mr. DODD, proposes an amendment numbered 3827 to amendment No. 3739.

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

The PRESIDING OFFICER. There will be 4 minutes of debate, evenly divided, on the amendment.

The Senator from Alabama.

Mr. SHELBY. Mr. President, I yield back my time. I think we have debated this quite a while this afternoon. Most people know about it.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, again, I thank my colleagues. I thank Senator CORKER, Senator WARNER, and Senator SHELBY. A lot of work went into this amendment. I urge my colleagues to support it.

I yield back our time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from West Virginia (Mr. BYRD) is necessarily absent.

Mr. KYL. The following Senator is necessarily absent: the Senator from Utah (Mr. BENNETT).

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

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—93

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

NAYS—5

Coburn	DeMint	Hatch
Cornyn	Dorgan	

NOT VOTING—2

Bennett	Byrd

The amendment (No. 3827) was agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 3755 AND 3757, EN BLOC

The PRESIDING OFFICER. The Senate will now vote on the two Snowe amendments en bloc.

If there is no further debate on the amendments, the question is on agreeing to the amendments en bloc.

The amendments (Nos. 3755 and 3757) were agreed to.

Mr. DODD. Mr. President, I move to reconsider the vote.

Mr. SHELBY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

AMENDMENT NO. 3826 TO AMENDMENT NO. 3739

Mr. SHELBY. Mr. President, I rise to bring up amendment No. 3826, the Republican consumer protection alternative. This amendment has been cosponsored by 14 of my colleagues. It is amendment No. 3826.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Alabama [Mr. SHELBY], for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, and Mr. ENZI, proposes an amendment numbered 3826 to amendment No. 3739.

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

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

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

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, before they begin debate on the next amendment, I thank my colleagues. This has been a difficult time even getting to this point. I thank Senator SHELBY and his staff and my staff and others. We have had a vote on the Boxer amendment, 96 to 1. We had a vote, 93 to 5, on the Shelby-Dodd amendment. We adopted two Snowe amendments in the last hour. That is a pretty good beginning on this bill.

I want to tell my colleagues I have received about 95 amendments to the bill that people will propose. I believe Members ought to be able to be heard on their amendments. This is something that will have to be self-imposed discipline, to some degree, but if Members will restrain themselves on time, more colleagues will get a chance to be a part of the bill and to be heard. If you ask for too much time, it will make it difficult. I just ask people to be considerate of each other. Most times, an amendment can be made—a big amendment—with an hour or two of debate and others less than that, maybe 20 minutes or 30 minutes equally divided. Again, I am not suggesting some amendments are more important than others. If you bring the amendments to us for review, perhaps we can adopt some or make them part of a managers' amendment. We will both have to check them out. If we can do that, we can reduce the number significantly. I think we have some smart proposals. I cannot do that alone. My colleague will have to agree with that.

It would help us a great deal if we can move this along, and I say that respectfully. I don't know whether we have an agreement on when we might vote on this amendment. I will ask my colleague to give us some idea. I would like you to think about how much time you would like, and keep in mind your fellow colleagues who would like to be heard on their amendments.

Mr. DORGAN. Will the Senator yield for a question?

Mr. DODD. Yes, I am glad to yield.

Mr. DORGAN. I think it is commendable that there has been a burst of activity on the Senate floor in the last couple of hours. We have had a number of votes. It took some while to wait for this to happen. I agree with the Senator from Connecticut and the Senator from Alabama that to the extent we can accommodate votes on a wide range of subjects—this is an issue that is very consequential to the future of the country, and we want to get it right.

From my standpoint, I have a couple of amendments I think are very important. Time agreements are not a problem for me. I am interested in having the opportunity to explain an amendment and have a short debate and then have the Senate register its judgment. I appreciate what the Senator just said. He would like to see us move along and be able to offer amendments. There are a lot of them on too big to fail and credit default swaps. I will talk to the managers. I hope I will have an opportunity to get them on the floor and get them offered.

Mr. DODD. I hope we can stay away from filibusters and get everybody to have an up-or-down vote. This is a very important bill, and it is also about how this institution functions and whether we trust each other to be able to offer an amendment, have an adequate amount of time to debate, and then vote up or down. That is how we ought to function.

I hope this bill will not only produce a good product in the end but will also have the healing quality this institution needs. We have been through a lot in this Congress. We need to get back to acting like colleagues, respecting each other's opinions, having a good partisan debate but doing it in a civil fashion, having the consideration each person deserves to be heard, and having a vote up or down. I offer that as a suggestion on how we might proceed.

Mr. SANDERS. If the Senator will yield, do we have any sense of what is happening this afternoon?

Mr. DODD. I will find out from my colleague.

Mr. SHELBY. Mr. President, I join my colleague from Connecticut. We have had a burst of activity this afternoon. I think we are off to a good start. We have to remember that this bill is

about 1,500 pages. This doesn't only affect a little bit of our economy, it affects all of our economy in one way or the other.

I have just laid down an amendment—the Republican alternative to the consumer products—and a lot of people are going to want to debate it on both sides. We are not here to delay this bill in any way. I think it is so important and it is so comprehensive that we are going to have a healthy debate. I appreciate the remarks of the Senator from Connecticut. I believe he understands that very well.

Mr. DODD. My colleague from Montana wishes to speak.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I inquire of Senator DODD, at this point in time, does he want me call up my amendment No. 3749 or just talk about it?

Mr. SHELBY. The Senator can call it up.

Mr. DODD. My friend can call up his amendment.

AMENDMENT NO. 3749 TO AMENDMENT NO. 3739

Mr. TESTER. Mr. President, I ask unanimous consent to set aside the pending amendment, and I call up amendment No. 3749.

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

The legislative clerk read as follows:

The Senator from Montana [Mr. TESTER], for himself, Mr. CONRAD, Mrs. MURRAY, and Mr. BURRIS, proposes an amendment numbered 3749 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To require the Corporation to amend the definition of the term ''assessment base'')

On page 368, strike line 3 and all that follows through page 369, line 14, and insert the following:

(b) ASSESSMENT BASE.—The Corporation shall amend the regulations issued by the Corporation under section 7(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)) to define the term ''assessment base'' with respect to an insured depository institution for purposes of that section 7(b)(2), as an amount equal to—

(1) the average consolidated total assets of the insured depository institution during the assessment period; minus

(2) the sum of—

(A) the average tangible equity of the insured depository institution during the assessment period; and

(B) in the case of an insured depository institution that is a custodial bank (as defined by the Corporation, based on factors including the percentage of total revenues generated by custodial businesses and the level of assets under custody) or a banker's bank (as that term is used in section 5136 of the Revised Statutes (12 U.S.C. 24)), an amount that the Corporation determines is necessary to establish assessments consistent with the definition under section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)) for a custodial bank or a banker's bank.

Mr. TESTER. Mr. President, I rise to urge my colleagues to support the Tester-Hutchison amendment. My colleague from Texas and I came to the floor yesterday to talk about this bipartisan, commonsense amendment to hold banks accountable for their behavior and to preserve the integrity of the FDIC deposit insurance fund.

Our amendment would force big banks to pay their fair share of insurance by basing assessments on assets rather than deposits. It would fix the lopsided assessment system that we have now, which unfairly burdens our community banks. It would ensure that the FDIC has the necessary resources to maintain the health of the deposit insurance fund.

Senator HUTCHISON and I think this amendment makes a good deal of common sense. I am pleased this is one of the first amendments up for consideration because it highlights the fact that Democrats and Republicans do agree on ways we can strengthen what is already a very good bill. Senator HUTCHISON and I are joined by Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN, SHAHEEN, CORNYN, JOHANNS, NELSON of Florida, and NELSON of Nebraska in offering this important bipartisan amendment.

After working on this bill for months with the good Senator DODD and the Banking Committee, I am pleased we are finally getting an opportunity to debate this bill and move it forward.

I know there are a number of other bipartisan amendments like this one where Members can join together to work to improve this bill. I look forward to considering them also.

With that, when the time is right, when leadership has agreed, I hope we can get a vote on amendment No. 3749.

I yield the floor.

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

Mr. DORGAN. Mr. President, before the Senator from Rhode Island speaks, let me just ask if he will yield so that I may ask a question.

Mr. WHITEHOUSE. Yes.

Mr. DORGAN. Mr. President, the Senator from Montana has offered an amendment. I am trying to determine if there is a list and how I might get on the list. I might propound the question to the Senator from Connecticut. There has been a Republican amendment offered, and that was set aside and the Senator from Montana offered one. I would like to talk to whoever is making a list.

Mr. DODD. There isn't one. This amendment will be agreed to. It is not going to require a vote. Other matters will require debate and discussion. That was the only reason to do this—to get it in the queue—and at some point today there will be an agreement to accept that amendment. They just didn't do it yet. I don't have a particular queue lined up.

It is my intention to ask Senator SANDERS to offer his, once we complete this—to be the next in line. I ask my colleagues to, instead of jumping up one after another trying to get in the queue, come and talk to us and let us orchestrate it in a way that will allow for consideration of various parts of the bill.

Mr. DORGAN. Mr. President, I thank my colleague from Rhode Island for his courtesy, and I thank Senator DODD. I was here earlier. I will come and talk about that queue as it exists. I hope my amendment on too big to fail will be part of the early amendments.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I was delighted to give the distinguished Senator from North Dakota a chance to clarify that.

I will speak just for a minute about amendment No. 3746, which I will not be calling up right now but which I intend to work with Chairman DODD on to call up later.

I wanted to mention that this afternoon this amendment received the endorsement of Americans for Financial Reform, a coalition of dozens of national and State consumer groups that are working to help pass the critical legislation we are debating today.

In addition to the coalition as a whole, the amendment has been endorsed by individual members as well, including the AARP, the Consumer Federation of America, Consumers Action, Consumers Union, and on behalf of its low-income clients, the National Consumer Law Center.

These groups have sent a letter to each of my colleagues which reads in part:

On behalf of consumers, AFR strongly urges you to support Whitehouse's Interstate Lending Amendment. By reinstating protections that existed prior to the U.S Supreme Court's decision in Marquette National Bank of Minneapolis v. First of Omaha Service Corp (1978), Congress will take a step in the right direction toward protecting consumers and leveling the playing field between national credit card companies and their local and community oriented counterparts.

The Whitehouse Interstate Lending Amendment takes a strong step towards restoring to each state the ability to protect its citizens from lenders based in other states. We strongly urge you to vote in favor of this Amendment and in favor of the consumer protections this Amendment promotes. By leveling the playing field between national banks and local lenders, you will send a strong signal to Main Street that their interests count. We urge adoption of this modest, yet tremendously helpful amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD this letter dated today from Americans for Financial Reform.

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

AMERICANS FOR
FINANCIAL REFORM,
Washington, DC, May 5, 2010.

Re Support for Whitehouse Interstate Lending amendment to S. 3217.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The consumer, employee, investor, community and civil rights groups

who are members of Americans for Financial Reform (AFR) write to express strong support for the Whitehouse Interstate Lending Amendment that will be offered during floor debate on S. 3217, the ''Restoring American Financial Stability Act.''

This amendment will restore to the states the ability to enforce interest rate caps against out-of-state lenders. By so doing, the amendment will help level the playing field so that intrastate lenders such as community banks, local retailers, and credit unions no longer are bound by stricter lending limits than national credit card companies.

Under current law, national banks are bound only by the lending laws of the state in which the bank is based. As a result, the current system gives lenders an incentive to locate in states with weak or non-existent interest restrictions. A handful of states, eager to attract lucrative credit card business and related tax revenues, have all but eliminated their consumer protections.

On behalf of consumers, AFR strongly urges you to support Whitehouse's Interstate Lending Amendment. By reinstating protections that existed prior to the U.S. Supreme Court's decision in *Marquette National Bank of Minneapolis* v. *First of Omaha Service Corp* (1978), Congress will take a step in the right direction toward protecting consumers and leveling the playing field between national credit card companies and their local and community oriented counterparts.

The Whitehouse Interstate Lending Amendment takes a strong step towards restoring to each state the ability to protect its citizens from lenders based in other states. We strongly urge you to vote in favor of this Amendment and in favor of the consumer protections this Amendment promotes. By leveling the playing field between national banks and local lenders, you will send a strong signal to Main Street that their interests count. We urge adoption of this modest, yet tremendously helpful amendment.

Please direct questions to Maureen Thompson.

Sincerely,

AMERICANS FOR FINANCIAL REFORM.

Mr. WHITEHOUSE. Mr. President, I know the membership of this organization that supports the amendment includes AARP, as I mentioned, that also supported it individually, the Center for Responsible Lending, Common Cause, Consumers Union, the NAACP, the National Association of Investment Professionals, the National Council of La Raza, and the Veterans Chamber of Commerce, in addition to a great number of other organizations.

This is an important amendment. It closes a loophole that was opened by the Supreme Court decision of 30 years ago, the decision to define the term ''located'' in the National Banking Act from way back in the Civil War era, 1863, as meaning the location where the bank is located, not the location where the consumer is located, so that when there is a bank in one State doing business with a consumer in another State, the laws of the bank's State govern.

There is nothing particularly wrong with that decision. The problem is that the banks figured out that they could go to States that had the worst consumer protections or go to States that would be willing to chuck their consumer protections in return for the influx of business. From those States which have the worst consumer protection laws, they could then market their products around to other States and undercut and dodge around the laws of Rhode Island, the laws of Minnesota, the laws of Connecticut, the laws of Iowa, the laws of Virginia—the laws of all the States that for more than 200 years, in the history of our Republic, had this authority to regulate interest and to protect our consumers.

This is an unintentional loophole. It has created grievous abuse of consumers who for the first time in the history of America are paying 30-plus interest rates under the law. When you and I were growing up, Mr. President, if a flier came in the mail that offered a credit card with a 30-percent interest rate, that would probably be a matter to bring to the attention of the authorities because it would be illegal. Now they market this stuff at will, and too many Americans, too many of our State residents, too many consumers are paying exorbitant and what would in that State be illegal interest rates because of that loophole. It is long past time to change it. This amendment would close it.

I urge the support of my colleagues, and I look forward to the chance to call up this amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3812

Mr. HARKIN. Mr. President, I come to the floor to speak about an amendment I have filed along with Senators SCHUMER and SANDERS, amendment No. 3812. The purpose of the amendment is very simple: to protect consumers from being charged unfair and unreasonable fees by ATM machines.

How often have you gone to an ATM machine to access your own cash from your own credit union or your own bank and they charge you a couple bucks, $2.50, $2.25, $3, $4? We have seen as high as $5 in parts of the country. I wish to talk about that issue, how unfair it is.

In recent years, Congress has acted to protect consumers by setting appropriate limits on the types of fees that financial institutions can charge consumers in areas such as credit cards, and spurred by a good proposal by Chairman DODD, the Federal Reserve is now considering rules regarding overdraft fees. One area that remains unregulated is the fees consumers pay to use ATMs.

Right now there is no limit that the operator of an ATM can charge a consumer for using that machine. Currently, the only regulation in this area—clearly insufficient, I might add—is that the operator must disclose how much they will charge. So when you access an ATM it has to tell you how much they are charging you and you can then refuse to do that, if you want. But this nominal disclosure requirement does nothing to ensure the charges are not arbitrary ways for banks and third-party owners of these machines to make an unreasonable sum on the backs of consumers.

Some of my colleagues may remember that until 1996, most processing networks actually prohibited the operators of ATMs from adding an additional surcharge for the use of the ATMs. Instead, to cover the cost of the transactions, banks paid fees that passed between the consumers' banks, the ATM operating bank, and the card network. That fee of about 50 cents still changes hands today to cover the cost of processing. Simply put: By charging consumers these fees while collecting fees from other banks, these big banks are double-dipping on the backs of consumers. My amendment would end that double-dipping.

Enticed by the prospect of easy money, in 1996 the rules that prevented banks from charging consumers were overturned by the big card networks—Visa, Mastercard, and the big banks. For this reason, in, 1997, I was a cosponsor, along with Chairman DODD and others, of a measure introduced by then-Banking Committee Chairman D'Amato that would have required the card networks to restore these rules and charge nothing for ATMs. Unfortunately, we were unsuccessful in that effort. But it was bipartisan. Chairman D'Amato was a Republican.

As a result, because we were unsuccessful in 1997, the amount of fees that consumers pay has skyrocketed. According to estimates by the Federal Reserve, the average surcharge fee paid by consumers for accessing their own money is $2.66. As I said, in some cases—in airports and other places—it is as much as $5 for gaining access to your own money.

That doesn't seem right to me, and it doesn't seem right to a lot of consumers. It is unfair for people to pay that much to access their own cash. If ATM operators want to charge a fee to cover the cost of providing a service, I can understand that. But that fee needs to relate to what it actually costs to process the transaction, not just the maximum they think they can get away with.

To ensure these fees are reasonable and related to the costs of processing the transaction, my amendment would require the new Consumer Financial Protection Bureau to ensure that fees charged consumers at ATMs bear a reasonable relation to the cost of processing the transaction.

The best data available suggests that the cost of processing a transaction today—ready for this—is 36 cents. Think about that the next time you go to the ATM and you have to get some cash and it comes up and says they are charging $2.50. The real cost of that is

about 36 cents. Where does the rest of the money go? The rest of the money goes to the big banks and the big card networks, and they are making a fortune.

We got that data from a survey conducted by the Office of Thrift Supervision, which suggested in 1997—the time we had our amendment—that the cost of processing a transaction was only 27 cents. So we factored in inflation, and that would bring the cost to about 36 cents today, and that assumes any improvements in technology have not brought down costs, which, obviously, they have. We have new technologies, faster speed networks, which probably has brought the cost down. So when I say the cost of going to an ATM machine to access money is 36 cents, that is on the high side.

So what our amendment basically says is that they can set up a reasonable charge based upon what the costs are, but we put an upper limit. We say no more than 50 cents per transaction. So our amendment would basically say anytime you go to your ATM machine they have to charge you a reasonable fee based upon what would be set, but in no case more than 50 cents, in no case more than 50 cents.

Again, I would just point out that until 2002, in my State of Iowa, the law required any bank establishing an ATM had to make that available at no cost—no fee to all users. So Iowa did not charge any fees at all, and Iowa banks did just fine under this agreement. Iowa consumers were protected from unfair fees.

But in 2002, this reasonable Iowa law was preempted by Federal banking regulators. Federal banking regulators preempted this. Again, in the absence of these laws, the Federal banking regulators have taken no action to limit the amount of fees consumers can be charged. According to the New Rules Project, national banks—these big banks—collected almost $5 million in ATM fees from Iowa consumers in the first 6 months after the Iowa law was overturned. Iowa credit unions data said it was about $10 million just in the first year. Well, add that up, and that can come to a lot of money.

Anyway, I bring this example of how things were in Iowa before 2002 because it is the kind of balance that the bill pending before us should restore. Quite frankly, things have tipped so far in favor of big banks in this country, and so far away from consumers, that we often don't even know what a reasonable balance looks like anymore. But the example of Iowa from several years ago in which consumers were protected from unfair ATM fees while banks still profited, is an example—I think an excellent example—of the balance we need to return to.

So this broader bill that Senator DODD and Senator SHELBY have brought forward isn't antibusiness or antibank, but it does seek to return us to a situation in which the needs of consumers and the rights of businesses are considered alongside one another. It restores some balance for consumers in our society.

When I looked at this bill, I thought: Well, there is one area that kind of seems to be getting overlooked. I suppose a lot of people might say: Well, $2 is not much. Well, here is the other unfair thing about it. The average person going to an ATM machine probably takes out $20, $50 to get them through a day or 3 or 4 days in the week, and they are charged $2.50 for accessing that $20 or $50. Someone else goes in and wants to get $500, and they are charged the same $2.50. So the burden falls more heavily on low-income people, moderate-income people who need to use the ATM machines to get some cash to get them through. That is grossly unfair.

It is unfair that the banks and the ATM operators can charge whatever they want to charge. As I pointed out earlier, according to the Office of Thrift Supervision and the data they collected, the average cost of processing this ATM transaction is only 36 cents. Why are you being charged $2.50 or $3 or as much as $5? Well, that is what this amendment seeks to stop; again, to get this balance back where it should be.

My amendment is also supported by the U.S. Public Interest Research Group, the Consumer Federation of America, Consumer Action, Consumers Union, and the National Consumer Law Center on behalf of its low-income clients.

I close by thanking my colleague, Senator DODD, for his tireless work to move this critical bill forward and to again help establish that balance in our country between our consumers, our depositors, our community banks, and the big banks. As I said, we have gotten so far off track we hardly recognize what a balance is any longer. I think this bill does a great thing in trying to restore that balance. I just want to make sure that consumers are no longer taken advantage of by these unfair ATM fees that are out there, and that is why I will be offering this amendment at the appropriate time.

Mr. President, I see the chairman is here.

Mr. DODD. If my colleague will yield.

Mr. HARKIN. Sure.

Mr. DODD. I just want to thank him for all his work. We have spent a lot of time in the last year or so on the health care debate, where we sat next to each other day after day going through all of that. We, obviously, go back a lot longer than that.

The Senator from Iowa and I arrived here on the very same day. The pages have oftentimes asked me when did I get here, and I have said: Thomas Jefferson was President when I arrived.

It wasn't quite that long ago, but we arrived together on the same day, 35 years ago, in the House of Representatives, and we have been great friends and colleagues.

No one cares more about not only his State but people all across this country who struggle. He is the author of the Americans with Disabilities Act, affecting millions of Americans, and I have a family member who benefitted from Senator HARKIN'S work. I wish there had been someone around in the 1930s when she was born who might have stood up and recognized her talents and ability. Fortunately, she grew up in a family where they did some things and she ended up helping restore the American Montessori system of teaching as an early childhood development specialist. But had she been born under different circumstances, I suspect she would have been doing piecemeal work somewhere.

So there is a lot for which our country has to thank the Senator from Iowa. I appreciate his efforts on this amendment and thank him for his general concerns on the bill as well.

Mr. HARKIN. I thank my friend from Connecticut. Every time I see my good friend here, I think of all the work that he did in getting our health care bill through, and now this. Talk about going out on a high note. I am sorry, as he knows, that he is not going to be here after this year.

Again, I think the fact that Senator DODD did the health care bill and got it through was a great achievement for the people of this country and now this financial reform, to make sure we don't go through what we did a few years ago again and to help our consumers have a little better balance in their dealings with the big banks and the big investment houses. This is a great bill, and I compliment him for it.

I know it has been a long tough slog, as they say, but future generations will look back and thank Senator DODD both for the health care bill, and I think for this financial reform bill. A lot of people may not understand all the intricacies of it—the high finance and all that stuff. Sometimes you can get a little dizzy thinking about all this stuff. But he understands it. He gets it. And Senator DODD has done a magnificent job in putting this bill together. It is going to help protect our consumers in this country.

So that is why I am proud to support it. I hope he doesn't mind if I offer an amendment to it, as I am going to do on the ATM piece. But I thank the Senator, and 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.

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

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

Mr. MENENDEZ. Mr. President, I come to the floor this afternoon to talk about the bill before us. I commend my colleague, the chairman of the Senate Banking Committee, Senator DODD, for his leadership on this crucial reform.

I want to start off by reiterating what I know many of my colleagues

have said, that this is a strong bill and it is a necessary bill. There is no doubt that we need Wall Street reform and we need it now. When tens of millions of Americans have lost their jobs, homes, and savings, Americans cannot wait any longer to end the reckless Wall Street practices that caused those problems.

I certainly never want to see us again be in a position where we had the Chairman of the Federal Reserve come to us, about a year and a half ago, and say to members of the Senate Banking Committee, you need to act because financial institutions are on the verge of collapse and their collapse would create a consequence to the national economy of enormous proportions.

I will never forget the dialog that took place there, in essence when Chairman Bernanke was asked, the Chairman of the Federal Reserve, what happened? Don't you have enough time, some tools at the Federal Reserve to get us through this period of time? He basically said, if you don't act you will have a global meltdown which basically means a new depression in the 21st century. Certainly a depression in the 21st century is much different than the depression this country lived through under President Roosevelt.

Since he is someone whose expertise is in Depression era economics, how we got into the Depression, what made it worse, how we got out of it, it was a pretty compelling set of arguments.

So here we are. What we want to do is make sure we are never put at that risk again; that there is not anything that is too big to fail because, in doing so, you can make all the wrong decisions knowing that even when you make the wrong decisions, and they are risky, the taxpayers will have to bail you out because we cannot have the country's whole economy go under. At the same time, we want to try to strengthen our regulatory process so we not only not face that reality but we create clear rules of the road.

I am for a free market. I believe in a free market. But there is a difference between a free market and a free-for-all market. There is a difference between when someone takes their own capital, whether as a company or as an individual, and makes an investment and when the investment does good, good for them; but when the investment goes bad we all have to pay for it. We cannot have a system where profits are privatized but losses become the general public's responsibility. That is, in essence, the core of what we are trying to do here—to make sure that such a system, which is what we have had, not a free market but a free-for-all market, gets changed so we never face that again.

As I said, I think this is an incredibly strong bill. But even a strong bill can have suggestions to make a good bill even stronger. I commend Chairman DODD for being open to ideas to make this bill even stronger, regardless of which side of the aisle they come from. Now that we have broken the Republican logjam that has been holding this bill up for over a week, I hope we can get to the business of fully legislating in a full and open debate. I know that is what the American people want and expect, that the Senators they sent to Washington actually get to work on the business of fixing these problems; not that they sit on their hands while one party holds up debate because the bill didn't do everything they wanted it to or because we had conversations—some of our colleagues on the other side of the aisle had conversations with Wall Street and basically they don't like a lot of what we are doing here. But, in fact, it is critical to the Nation's economic security.

I am glad to see that we have colleagues now on the train. I hope people do not try to pull the emergency brake switch to try to stop us from going to where we need to go.

I think this is a great bill but there are some amendments I plan to offer to the bill. I think they make the bill even stronger. I have filed an open books amendment, to require companies to be more transparent in their financial reporting. Many experts believe one of the reasons we got into this mess in the first place was because no one—not investors, not regulators, not counterparties, not even the people running the companies—could actually figure out the true value of these big Wall Street banks. That is because banks hid a significant percentage of their liabilities, their risks, off their balance sheets. For example, Lehman Brothers treated $50 billion in repurchase agreement transactions as sales instead of financing transactions on their balance sheets, misleading everyone about the state of Lehman's finances.

The bottom line, you know, may sound very technical but if I can take my liabilities off of my personal balance sheet and put them somewhere else and look as though I am better off than I am, that is fundamentally wrong. Clearly, had there been more transparency we might have dealt with the Lehman situation sooner, thus reducing the repercussions of a catastrophic bankruptcy.

The amendment I am proposing is simple. It requires companies that are designated as systemically risky to disclose all their off-balance sheet activities in their annual 10–K report to the Securities and Exchange Commission, and provide detailed justifications for why they are keeping those liabilities off their balance sheets.

It also requires disclosure of daily average leverage ratios in quarterly reports. This will prevent companies from moving liabilities off their balance sheets only days before when they are reporting earnings, as Lehman and others allegedly did.

It is a step toward transparency. We know capital markets work best when they are transparent. That is the thrust of what this bill is trying to do. Put simply, the largest banks should not be able to deceive regulators, investors, counterparties, and the public, by hiding their liabilities in off-balance vehicles. We need transparency and clarity, not trickery and deception.

I also am happy to join with Senator AKAKA, who is leading on this particular amendment but I am his prime cosponsor, to require stockbrokers to act in the best interests of their clients. What a revolutionary concept, that stockbrokers act in the best interests of their clients. Brokers are not required to act in the best interests of their clients and can sell clients worse investments because they make more money on them, without the client ever knowing it. Brokers are only required to have reasonable grounds to believe that a property they are recommending is suitable for the customer, even if it is not the best product for the customer. Typically, brokers do not have to make disclosures about conflicts of interest or past infractions. In contrast, investment advisers are legally and ethically bound to put a client's interest ahead of their own—in essence to have a fiduciary duty; and to fully disclose those conflicts they may have.

All brokers currently have exactly the same conflict of interest that Goldman Sachs had in its civil fraud case by the Securities and Exchange Commission: financial incentives to steer clients toward bad investment products that brokers made more money on.

But retail investors are confused. They commonly think the services that investment advisers and brokers provide are nearly identical. An SEC Commission study in 2008 by the RAND Corporation found that investors were confused about the differences. So I don't think we need further studies. Senator AKAKA's amendment and mine would end the confusion. It would require brokers to act in the best interests of their clients, just as investment advisers already do. It requires brokers to disclose conflicts of interest, so brokers would have to tell retail clients if they get more fees for selling a particular mutual fund or annuity product.

It gives the FTC discretion to apply a fiduciary duty standard for all types of investors which would include institutional investors who are victimized by the allegations in the Goldman Sachs case. Investment advice should be transparent. If there are conflicts of interest or higher fees for a particular product, investors should know about it. Investors need to know that brokers have a duty to act in their best interest.

I also have an amendment to expand the opportunities for women and minorities in banking. Currently, the staff of financial regulatory agencies lags in diversity. According to the Office of Personnel Management, minorities comprise only 18.7 percent of financial institution examiners; women comprise 34 percent.

A recent GAO report found that among minority banks, only about one-third thought their regulators were doing a good or very good job of making an effort to protect or promote their interests and less than a third of minority-owned institutions have utilized services offered by the regulators in the last 3 years.

Only 5.7 percent of African-American firms and 5.6 percent of Hispanic firms obtained bank loans to start their businesses, compared to 12 percent of non-minority firms.

The amendment I am proposing would rectify this by creating the Offices of Minority and Women Advancement at all the major financial regulatory agencies. Those offices would be responsible for all matters of diversity, including diversity in agency employment and contracts. Office directors would provide annual reports to Congress on diversity issues, with recommendations for improvements.

The amendment would also require publicly traded companies to provide in annual SEC filings ''diversity report cards'' which would break down by gender and race the percentages of officers and employees who are minorities and women and the percentage of total compensation they receive.

Finally, it extends the minority banking requirements under section 308 of the Financial Institutions Reform, Recovery and Enforcement Act to the Federal Reserve and the OCC. A similar amendment has already passed the House of Representatives unanimously. I would certainly hope we could do the same here.

Diversity within the Federal banking agencies will help ensure different perspectives are being brought to bear on issues and enhances the likelihood these solutions will be comprehensive and inclusive of a broad range of views. It will make our banking system fairer, more stable, and more just.

I also have an amendment with Senator MERKLEY, to prohibit corporate executives and highly paid employees from hedging against any decrease in the market value of their employer's stock. This amendment is one that I think is very important because I am concerned there are a lot of bad incentives undermining the goals of executive compensation.

A recent study found that at least 2,000 cases at 911 firms over an 11-year period in which executives tried to profit by betting against their own company—by betting against their own company. Hedging undermines, in my mind, the whole point of incentive compensation to make sure that executives only benefit when the company does well.

If they can hedge their stock, then it does not matter how well the company does, because either way the executive makes money. Tails they win, heads they win. That simply is fundamentally wrong. Worse, it may, in some cases, give executives an incentive to sort of ''throw the game,'' to use their privileged position to take a position that may very well not be in the company and its employees' best interests and then make a killing by selling the company stock short. Not good for the company, not good for the employee, not good for investors. My amendment would place a ban on stock hedging by executives and highly paid company employees, namely those making more than $1 million per year, preventing them from betting against their own company.

Put simply: Executives and highly compensated employees should never have financial incentives to act against the best interests of their very own company.

I am hoping some of these may very well be able to see their way into a managers' package. I hope we do not have to come to the floor to offer all of them.

The recession has hit everyone. Community Development Financial Institutions have been hit hard, especially hard. They are in a tough position because they have got to rely on the big banks for capital, which is neither affordable nor easily accessible.

My amendment would authorize the Treasury Department to guarantee bonds issued by qualified Community Development Financial Institutions for the purpose of community and economic development loans. There is also no cost to the taxpayers to do this. CDFIs have a track record of job creation and community development. They are the most effective way to infuse capital in low-income communities because the capital goes directly into those communities and economic development efforts.

In focusing on the finances of Wall Street, I think this is an opportunity not to forget about the finances of Main Street, where most of the jobs are and the devastating impact that Wall Street's actions have had on Main Street.

Lastly, I wish to talk about whistleblower protections. They are the first and most effective line of defense against corporate fraud and other misconduct, yet because of inadequate protections against retaliation, would-be corporate whistleblowers often keep quiet when they could be protecting the public from illegal activity.

As we have seen in the emerging Lehman Brothers scandal, a whistleblower who tried to alert management to illegal accounting tricks was fired. Though the Sarbanes-Oxley Act of 2002 did much to expand protection of corporate whistleblowers from retaliation, it lacks several modern whistleblower protections that have been standard in every piece of legislation since 2006.

My amendment updates Sarbanes-Oxley protections against retaliation by giving whistleblowers 180 days to file a claim instead of the 90 that exists right now; giving whistleblowers their day in court with a clearer right to a jury trial; clarifying that whistleblowers are entitled to compensatory damages; strengthening due process rights for whistleblowers by eliminating inconsistencies in current law; preventing employers from gagging whistleblowers by holding them to contractual obligations; ensuring that whistleblowers will be protected for all disclosures of material misconduct.

We think those opportunities strengthen a citizen to be able to engage and to come forth in a way that protects the company, that protects the investors, that protects all of us in the economy at large. So, again, I want to commend Chairman DODD for his leadership in this effort. It has been a pleasure, as a member of the Banking Committee, working with him on some of the underlying provisions that he has already included in the bill that makes it so strong.

I stand ready to work together to address these remaining issues, some of which I hope we can work through and get accepted, others which, if necessary, I am ready to come to the floor and seek to offer.

At the end of the day, I want a bill that puts New Jerseyans in a position, and all Americans, in which they will never be asked to reach into their pockets to take care of the excessive decisions of companies that privatized the profit but then said, when it went bad and the gamble did not go well, that all of us should pay. We cannot have that. That is what the core of this bill does. That is why I have been proud to work with the chairman.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, before our colleague from New Jersey leaves, let me thank him. He is a member of our Banking Committee, and a very valuable member. He has been tremendously helpful as we have worked together, through my 37 or 38 months as chairman of the committee, very closely on the housing issues, on the credit card legislation.

There have been some 42 measures that have come through the Banking Committee in the last 38 months, 37 of which have become the law of the land. That is a pretty good record out of our committee. It reflects the tremendous effort of members of that committee to help pull together sound pieces of legislation.

Senator MENENDEZ has been critical in so many of those efforts. I want to thank him for that and I want to thank him for his ideas on this bill. We are hoping we get many of these amendments up and have a chance to debate them. But I thank him for his contribution already.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3749

Mrs. HUTCHISON. Mr. President, I rise to speak on the Hutchison-Tester amendment. This is an amendment that truly will help community banks. It will level the playing field for them. It is something I have been working on

for several months, during all the consideration this bill has gone through in committee. This was one of the first things I wanted to attack.

I am pleased we are going to get a vote very soon on this amendment, either a voice vote or a record vote. I know that with the bipartisan support we have, we will pass this amendment.

I thank the cosponsors of the amendment: Senators CONRAD, MURRAY, BURRIS, BROWN of Massachusetts, HARKIN, SHAHEEN, CORNYN, JOHANNS, NELSON of Florida, and NELSON of Nebraska, as well as, of course, Senator TESTER and myself.

We are trying to level the playing field for community banks. The underlying bill sets a way of assessing the banks by the FDIC. There has been flexibility in the past, but we are going to set in statute with this amendment that banks will be assessed based on assets minus capital. That should be the way to assess.

Community banks, with less than $10 billion in assets, rely heavily on customer deposits for funding. But that penalizes these very safe institutions with these customer deposits by forcing them to pay deposit insurance premiums far beyond the risk they would pose to the bank system. Despite making up just 20 percent of the Nation's assets, these community banks contribute 30 percent of the premiums to the FDIC. At the same time, large banks hold 80 percent of the banking industry's assets but pay only 70 percent of the premiums. There is no reason for community banks to have to make up this gap.

What we need is a level playing field. It is the community banks that are loaning to our businesses. It is community banks that are keeping our communities supported in so many ways, from the football programs, to the scoreboards in stadiums, to making sure small businesses have inventory loans. Community banks didn't cause the problems. To have them pay more proportionately in FDIC insurance than the big banks do is unfair.

Senator TESTER and I want to correct this inequity. That is exactly what the Hutchison-Tester amendment does.

I appreciate very much Senator DODD saying he agrees with us, that he will work with us to pass this amendment. I am pleased we have such bipartisan support. It will immensely improve the bill and give community banks one of the pieces they need to stay in business and hopefully free them to provide more liquidity to the businesses in communities all across America.

I yield the floor.

Mr. DODD. Mr. President, I thank my friend from Texas, a member of our committee, Senator HUTCHISON. There are a lot of amendments people will offer that subtract or add provisions to the bill. Her amendment with Senator TESTER and others is a very important piece. This could be a separate bill. It could be a freestanding idea. This would qualify as such an idea. Maybe it doesn't sound like much to people, but to consider the liabilities, that really gives a far more accurate picture of the financial condition of a smaller bank. Therefore, the assessments make so much more sense if you have a fuller view of how that institution is doing.

It is so painful, on Friday afternoons after 4 or 5 o'clock, every week, 5 banks, 6 banks, 10 banks—I feel so bad when I hear the names—a lot of them in small towns in our country, maybe small amounts, some of them a little larger—you think about a small town where there might be one lending institution, maybe two but not much more than that—when one closes its doors, what it means to a community to lose that lending institution where everybody knows everybody and you don't have to have a computer printout to know whether Mrs. HUTCHISON or Mr. DODD is going to be able to meet that obligation; they have known the family. They know how it works, to be able to help them by reducing the burden financially on them.

At the same time, we need to keep up that insurance because you want to protect depositors. However badly you feel—and I do every week when I read the names of the smalltown banks that have to close their doors—you want to make sure those customers can show up Monday morning and handle their finances. Shifting the burden a bit more to larger institutions that can afford to do so is a great idea.

As my colleague knows, I was prepared to accept it this afternoon. I don't have the right to do that on my own. If I did, if I were king for a moment, I would say: Let's accept the Hutchison-Tester amendment. I am confident we will.

I thank my colleague and Senator TESTER for offering a very sound, very worthwhile proposal that will be a help to community banks.

Mrs. HUTCHISON. I thank the distinguished chairman of the committee. Of course, we could take over the world right now, since he and I are the only ones on the floor.

Seriously, Mr. President, this is significant because I do believe this bill is going to pass. We are working very productively to try to make some changes in the bill that will make it much better for community banks.

As the chairman knows, the FDIC has decided to prefund its deposit insurance fund for the next 3 years by the end of this year. If we change this formula and ensure community banks will not carry the heavier burden, that is going to have an impact this year in the liquidity of those banks and their capability to lend.

I appreciate very much the chairman's support. I look forward to having our amendment either voice voted or a record vote. I think we will win overwhelmingly with the support of the chairman and ranking member.

Mr. LEAHY. Mr. President, last week we began debate on Senator DODD's Wall Street reform legislation. This is the culmination of a lengthy dialogue on how best to rein in Wall Street's excesses, and bring about a new era of corporate responsibility. I have pushed, and will continue to push, for reform that preserves the role of the antitrust laws as a tool to keep Wall Street honest and promote competition in the financial industry.

The recent economic crisis showed all of us that corporations do not act responsibly without adequate oversight. As we work to pass this landmark legislation, it is important to remember that, today, there is another industry that is not required to even play by the same rules of competition as everyone else. Benefiting from a six-decade-old special interest exemption, the health insurance industry is not subject to the Nation's antitrust laws. We can surely agree that health insurers should not be allowed to collude to fix prices and allocate markets.

Large corporate interests impact the daily lives of hardworking Americans and must be regulated. When any large corporation acts irresponsibly, whether it is a financial institution or a health insurance company, Americans pay the price. Today I filed the Health Insurance Industry Antitrust Enforcement Act as an amendment to the Wall Street reform bill. This amendment, which is cosponsored by 21 other Senators, will repeal the health insurers' antitrust exemption and ensure that they follow basic rules of fair competition. Competition ensures that consumers will pay lower prices and receive more choices.

Congress and the President have recently enacted comprehensive health insurance reform. It was clear from that debate, and from the Judiciary Committee's hearing on this issue in October, that the time to repeal the health insurers' antitrust exemption is now. The language I am offering today passed overwhelmingly in the House, and it is supported by the President. It has received a cross-section of support from groups such as the Consumer Federation of America, the Consumers Union, and the American Antitrust Institute. This repeal will ensure that basic rules of fair competition apply to those reforms included in the new health insurance reform laws.

Last fall, I introduced similar legislation to repeal the health insurers' antitrust exemption. The Judiciary Committee hearing I chaired examined the merits of this repeal. The lack of affordable health insurance plagues families throughout our country, and this amendment is an important step towards ensuring that health insurers are subject to the laws of fair competition.

Today, I renew my call for the Senate to take up and pass this amendment to repeal the antitrust exemption for health insurance companies. I hope all Senators will join me in support.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

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

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

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

Mr. FRANKEN. Mr. President, I would like to talk a little further about the problems with credit rating agencies. Yesterday, I filed an amendment to the Wall Street reform bill that would create a Credit Rating Agency Board and help encourage competition and, most importantly, accuracy in the credit rating system.

The major role the credit rating agencies played in the recent financial crisis has been largely overlooked. Most of the blame has been directed at Wall Street's oversized banks and the investment firms that were securitizing any kind of debt they could get their hands on. Ultimately, these firms got their hands on quite a lot, and one of their favorite products became mortgage-backed securities.

Investment banks and hedge funds realized there was a lot of money to be made—there is about $9 trillion worth of mortgage-backed securities in the market right now. So they securitized every mortgage they could find, and once this happened, this source of easy profits dried up. So Wall Street demanded more, and mortgage lenders all too happily lowered their lending standards and delivered a new fleet of subprime mortgages for Wall Street to securitize.

As we all know, subprime mortgages are riskier than regular mortgages. That is why they are called subprime. Borrowers are more likely to default. Yet when these risky mortgages were packaged, firms were able to sell them easily.

One of their biggest selling points? Well, they came with a nice big ''AAA'' stamped on them—three letters that say: This product is safe. This product belongs as part of a pension fund, a retirement account or an educational endowment.

So that is where many of these risky subprime mortgage-backed securities ended up. When they failed, they ended up costing working Americans billions and billions of dollars in losses to their savings. But much of this could have been prevented, if only the ratings for these exotic securities had reflected their true risk.

We need to reform the way credit rating agencies do business. Right now, there is nothing to compel them to produce ratings that reflect a product's real risk. Quite the contrary, they are incentivized to provide highly inflated ratings so they can keep getting repeat business.

That is why I have filed an amendment to change the incentives in the industry. My amendment, No. 3808, which I have crafted with Senators SCHUMER and NELSON, would finally encourage competition and accuracy in an industry that has little of either.

To stop the jockeying by raters to get repeat business, my amendment would create a clearinghouse—a clearinghouse—to assign a rating agency to a product issuer for the purpose of an initial rating. The clearinghouse—which will be a self-regulatory organization called the Credit Rating Agency Board—will set up its own rules on how this assignment will work. It could be random, it could be formula based, just as long as the issuer does not choose which agency rates its product. This will eliminate the incentive for the rater to give an inflated rating in the hopes of getting that repeat business.

The Credit Rating Agency Board would be comprised of industry experts: investors, issuers, raters, and, of course, independents. A majority of its members would be investors, including institutional investors who have experience managing pension funds and university endowments. They would have a vested interest in accurate credit ratings because they depend on them when making investments.

Another key element of my amendment is that the Board will regularly evaluate the performance of the credit rating agencies, and they would have to take that performance into account in coming up with an assignment mechanism. In my mind, there is no better way to get accurate ratings than giving more initial rating jobs to the most accurate raters—and fewer jobs to those that repeatedly do a sloppy job.

Finally, the Board will be able to prevent raters from charging unreasonable fees. This will strike at the heart of sweetheart deals, in which a rater asks for more money for a better rating. Make no mistake, that is what has been happening. Just last week, Chairman LEVIN held a hearing in the Permanent Subcommittee on Investigations. His team revealed many e-mail exchanges between issuers and credit rating agencies that exposed how they did business.

Here is one e-mail from Moody's to Merrill Lynch, and I quote:

> We have spent significant amount of resources on this deal and it will be difficult for us to continue with this process if we do not have an agreement on the fee issue. . . . We are agreeing to this under the assumption that this will not be a precedent for any future deals and that you work with us further on this transaction to try to get to some middle ground with respect to the ratings.

Does this sound like Moody's was objectively evaluating the value and risk of Merrill's product? It doesn't sound like that to me.

I am confident the assignment process under my amendment will result in increased competition in the credit rating industry and provide incentives to produce accurate ratings. The amendment allows issuers to go to whichever rating agency they choose for second or third ratings, but these followup ratings will more likely be accurate because raters know they will be compared to the initial rating. More accurate ratings will mean safer products that end up in pension funds and in retirement accounts. Safer products mean more retirement security for working Americans.

So, once again, this all boils down to security and stability in our financial system. The greed and recklessness driving Wall Street over the past decade has wreaked havoc on our economy, and we need to take bold action to rein it in.

Ignoring the magnitude of this problem will only come back to haunt us. We simply can't let that happen. We must take action to fundamentally change the way the system works by putting accuracy first in these ratings.

I call on my colleagues to join me and Senators SCHUMER, NELSON, BROWN, WHITEHOUSE, and MURRAY in supporting this essential reform to restore integrity to the credit rating agency system.

Thank you, Mr. President. I yield the floor, and I note the absence of a quorum.

The PRESIDING OFFICER (Mr. BEGICH). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. WICKER. 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. WICKER. Mr. President, I had not intended to speak tonight, but having heard my friend, the Senator from Minnesota, speak about the problems with the rating agencies, I thought I would rise to say that in very many respects the Senator from Minnesota is correct. It is my understanding that the underlying bill as yet has no provision whatsoever dealing with the rating agencies. I think certainly if that remains, it will be a major flaw in the legislation.

I don't know the details of the amendment the Senator from Minnesota was referring to, but I certainly welcome debate about the rating agencies to make sure they are accurate and to acknowledge so many mistakes that have been made by those agencies in the past. So I wish to commend the Senator for his debate about this issue.

Mr. DODD. Mr. President, will the Senator yield?

Mr. WICKER. Mr. President, I have a couple more points I wish to make, and I don't have much more time. But I am happy to yield to the chairman.

Mr. DODD. Mr. President, title IX of the bill—and I am not suggesting you are going to love every dotted i and crossed t, but in title IX of our bill we do cover rating agencies. Again, this is a complex area, and there are different ideas about how to do this. But the legitimate point made by the Senator from Minnesota about rating agencies is something we share, and in title IX we try to address ways in which we can get far more accountability out of these agencies.

Mr. WICKER. Mr. President, reclaiming my time, I appreciate that. I think the Senator would also concede that there are many in this body and in this building who would make a case that the bill is far from adequate as regards to the rating agencies, and we will have debate about that.

Mr. DODD. I accept that argument, but I would not accept the argument there is nothing in the bill about rating agencies.

Mr. WICKER. I appreciate the Senator's statement. I hope we can strengthen the bill in regards to rating agencies. I also hope we can do this: We have an opportunity in some amendments later on in this debate—perhaps next week or perhaps the week after—to address this question of the GSEs, Fannie and Freddie. I think almost everyone would acknowledge that much of the problem that was caused in 2007 and 2008 stemmed from the GSEs. There has been an effort on the part of Senator SHELBY and others over time to rein in and have some important regulations for Fannie Mae and Freddie Mac. I would hope we could have an honest to goodness debate and include this very important aspect of financial reform in this legislation; otherwise, I think we haven't gotten to part of the problem.

Then, I would say also, we are going to have debate over the next few days and perhaps weeks about this all-powerful consumer agency that would be created. Certainly, we need to protect the consumers. But as I understand this legislation which we will be asked to consider and to vote on and have an opportunity to debate, it creates one of the most important—one of the most powerful, all-powerful individuals in the entire Federal Government; someone who would not even have to answer to a board, as head of this all-powerful consumer protection agency. I think the fact that we are hearing more from Main Street rising up in dismay saying the Main Street agencies didn't cause these problems—the car dealers, the orthodontists who might finance payments over time, the medium-sized banks and credit unions—they say: Mr. Senator, we are not part of the problem. Why are we being penalized and brought into the purview of this all-powerful Washington, DC, regulator?

I think the concerns of Main Street can be addressed by the Senate, and we can still pass a bill that will cover the abuses of Wall Street which, after all, is what we are after.

So I wanted to use the remarks of the Senator from Minnesota as a springboard to begin to discuss a number of issues, including Freddie and Fannie, including dealing with too much power in the form of this regulator, as well as dealing with the issue which the Senator brought up of the rating agencies.

I thank the President, and I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, just on my own time, again, I don't necessarily expect agreement on everything, but I wanted to make the point that 40 pages of our bill deals with rating agencies. This isn't a page or two or a thought or two. There are sections that go in this bill from section 931 to 939, with subtitle C: Improvements on the regulation of credit rating agencies. Forty pages of this book deals specifically with ways in which we try to get greater accountability and reform in the credit rating agencies—a very important issue, one that obviously people have additional ideas about, and I accept that. There might be ideas that even strengthen this; I don't claim perfection. But I want to make sure people have looked at the bill before they get up and suggest there is nothing in this bill about it. Quite the contrary, there is a very strong section on rating agencies.

So, again, people are entitled to their own opinions but not their own facts. With all due respect to my friend from Mississippi who has unfortunately left the floor, I wish to make the point to him that he might not like what I have written—we have written—but there is very strong language in here on getting that greater accountability out of our rating agencies.

With that, Mr. President, I notice at least one additional Member who perhaps is going to come over to be heard, so I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DODD. Mr. President, I ask unanimous consent that on Thursday, May 6, after the opening of the Senate, the time until 10 a.m. be for debate with respect to the Tester-Hutchison amendment No. 3749, with the time equally divided and controlled in the usual form; that at 10 a.m., the Senate proceed to vote in relation to the amendment, with no amendment in order to the amendment prior to the vote; further, that the Sanders amendment No. 3738 be the next Democratic amendment in order, and to clarify for the RECORD, the amendment would be called up upon disposition of the pending Shelby amendment No. 3826.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Mr. President, let me say this, if I can, while we are waiting to do the wrap-up here. We finished up on the series of votes sometime around 4 o'clock or 3:30 this afternoon. It is now 6:30. Other than some statements made by Members regarding various amendments, the pending amendment is the one offered by my colleague from Alabama dealing with the consumer protection part of the bill. I am anxious for us to debate that. I regret we didn't have any debate this afternoon.

I made the point that Members have amendments—and we have all been around—most people—long enough to know that with some 90 amendments, it is not going to mean every amendment people have will be offered. But to the extent that time is used effectively, we can maximize the number of amendments that can be offered. Whether you agree with our colleagues or not, they ought to be given the opportunity to offer an amendment and to debate it and get a vote. Again, that doesn't mean every amendment will be treated equally here, but I have been determined to try to make this work for as many Members as possible. But when 2 or 3 hours go by and not a word is spoken about a pending amendment, the hour will come—and I can predict the debate: You have not given us enough time to debate our amendments. I am keeping score privately about the times that have gone vacant when no one has talked on a pending amendment.

Tomorrow, after the disposition of the Tester-Hutchison, Hutchison-Tester amendment, I will be asking at that time prior to that vote for a time agreement on the pending amendment. My hope is it will be reasonable, take an hour or so to do that. I understand that. But I am not going to tolerate a whole morning wasted on that with all these other amendments. We need to have that debate and then move along. I say that respectfully.

We are not going to spend an endless number of days on this bill. There are a lot of other matters to be considered by this body. This is a very important bill, and it is important that we listen to the various ideas people want to offer to it.

I say this to my colleagues: Try to keep the time requests short. This was a good beginning today, but I would have preferred we could have used the last 2 or 3 hours to debate the pending amendment and then schedule a vote in the morning. I believe 2 or 3 hours to debate an amendment ought to be adequate. I recognize that not every amendment is considered as important as others. Prioritizing the amendments is important.

Senator BERNIE SANDERS has an amendment that will come up afterward. I cannot speak for him, but I asked him. He said he might take an hour. That is a reasonable request. He has an important amendment and wants to be heard on it. I hope Members will follow the Sanders example and be respectful of others so we can get many amendments in.

My hope is that tomorrow evening we will be here later. We are going to be here Friday, I gather. I do not make those decisions, but I have been led by the leadership to believe we will be here Friday. If I had my way, we would be here Saturday and Sunday to get the bill done. I will be urging the leader to keep us here as long as necessary to have a full debate on this bill. I am not sure I will succeed in those requests, but I want to make them.

Given the complexity of this bill and the interest Members have, if we utilize the time rather than sitting in quorum calls hour after hour—we will hear that bellowing that occurs: I never had a chance to be heard on my amendment. Why didn't I have time to be heard? The answer is going to be—I am keeping the record here—how much time I have been sitting around waiting for someone to come debate an amendment.

If I sound a little frustrated—it is a little too early in the debate to get frustrated, but I wanted to express it in advance of the real frustration that will come later on.

There will be no more votes this evening.

I see my colleague from Colorado is here. I am going to do the wrap-up and then allow my colleague to be heard.

MORNING BUSINESS

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

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

TRIBUTE TO CONGRESSMAN DAVID OBEY

Mr. COCHRAN. Mr. President, I was saddened by the announcement of my friend, Congressman DAVID OBEY of Wisconsin, that he will retire from the U.S. House of Representatives. He has served with great distinction for the people of his district in Wisconsin since April 1, 1969.

He was elected to succeed Melvin Laird, who had resigned from the House to serve as Secretary of Defense. DAVID OBEY was reelected to 17 succeeding Congresses. In the House, he has chaired the Joint Economic Committee and the Committee on Appropriations. DAVID OBEY has had a career of distinction in the Congress. He has been conscientious in the discharge of his duties and responsibilities as a Congressman and he has been a good friend of mine.

I will truly miss working with DAVID OBEY on the Appropriations Committee. We dealt with some of the most contentious issues of our time. I always respected him even though we sometimes had to disagree on issues that were being considered by our committee.

He was a spirited and effective Member of Congress. I extend to him my very good wishes for the future.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I want to join my great friend from Mississippi, Senator COCHRAN, in his sentiments about DAVID OBEY.

I have known DAVE OBEY for 36 years. He had already been in Congress about 4 or 5 years when I got to meet DAVE, when I arrived in 1975. He is a wonderful individual, with deep passions. He was the best ally you ever had if he was on your side, and he was a frightening opponent if he was on the other side. Having been on both sides of an argument with DAVE OBEY, believe me, I much prefer having him an ally on issues.

He is a notorious workhorse who showed up every day with his sleeves rolled up to fight for not only the little guy in his own district in Wisconsin but for people all across the country. Working men and women never had a better ally in the Congress of the United States than they did in DAVE OBEY.

He did not spare any of his emotion or rhetoric when it came to the defense of that working man and woman in our country during his more than 40 years of service. He has great passion. Nothing he disliked more than a bully, and nothing ignited his temper more than any injustice.

He loved his State, his family, and enjoyed a great joke when we would spend time with him in various committees and the marking up of bills. He and I worked together. We were involved, when in my earliest days in the House I was a strong backer of Richard Bolling from Missouri to be majority leader back in 1976 I think it was.

Gillis Long of Louisiana and I were the comanagers of Richard Bolling's campaign to become majority leader when Tip O'Neill was going to become Speaker and there was a contest over the majority leader's race.

The other great ally in that effort was DAVE OBEY of Wisconsin. That is when I first got to know DAVE, in that battle for the majority leader. We lost that battle. Dick Bolling did not make it. Jim Wright became the majority leader in a very close contest, in fact, with Phil Burton of California. It was a 1-vote margin that determined the majority leader's race.

Richard Bolling dropped out after the second ballot, did not get enough votes. But DAVE OBEY and I and Gillis Long and a group of others organized to support Richard Bolling. That is when I got to know DAVE. I was with him about a couple of weeks ago. ROSA DELAURO, the Congresswoman from the New Haven district in Connecticut, my former campaign manager, chief of staff for 7 years, was only the second woman to be the Chief of Staff of a Senator of the United States. She served with me for 7 years and went on to become a Member of Congress for the last 20 years herself.

ROSA sits on the Appropriations Committee and chairs the Agriculture Subcommittee. DAVE OBEY was at that event for Congresswoman DELAURO and gave some wonderful remarks on behalf of her that evening.

I join THAD COCHRAN in wishing DAVE the very best. He served his State, his district, and his country with distinction and great patriotism. We wish him the very best.

JUSTICE FOR NEVADA'S COLD WAR VETERANS

Mr. REID. Mr. President, I rise today to acknowledge an important achievement for Nevada's Cold War veterans and their families. These individuals served their country at the Nevada Test Site, where over one thousand nuclear weapons detonations took place over four decades of nuclear testing. The work at the Nevada Test Site, NTS, helped America win the Cold War, but it also left thousands of workers with debilitating cancers. Beginning today, many of these workers will now be eligible for automatic compensation, putting an end to years of bureaucratic nightmares and redtape.

On February 19, 1952, the Nevada Test Site was created to serve as the Nation's nuclear test site. 174 atmospheric and underground tests were performed there before the Limited Test Ban Treaty of 1963 banned all atmospheric, space, and sub-sea nuclear weapons testing. Another 754 tests were completed before the United States established a moratorium on nuclear weapons testing in 1992. The vast majority of testing in this period took place underground, in a network of tunnels and shafts, although some nonweapons nuclear testing continued to take place above ground. Even though these tunnels were designed to contain the radiation produced by the tests, most of the underground detonations did release radiation that reached NTS workers.

In 2000, after a number of my colleagues and I had begun to hear disturbing stories from our constituents about illnesses they had gotten from their nuclear weapons work and their inability to get any financial compensation from the government, we introduced and passed the Energy Employees Occupational Illness Compensation Act. This legislation was designed to allow thousands of America's Cold War veterans who had worked for the Department of Energy to receive compensation that would not only help pay their medical bills but would also honor the sacrifices they and their families had made for their country.

Unfortunately, it soon became clear that even with this new law, it would not be easy for many workers to get the compensation they deserved. In 2005, I began to hear from workers and survivors complaining that they were being put through a seemingly endless stream of bureaucratic redtape only to be denied in the end. I heard stories about workers who were encouraged to remove their radiation detection devices so that they could continue to work even after reaching the maximum allowable radiation levels, yet their records showed zero radiation exposures year after year. I was enraged that these workers were denied compensation simply because their employer failed to keep an accurate account of how much radiation each worker was exposed to, so I embarked upon a three-pronged strategy to add

NTS workers to the Special Exposure Cohort, SEC, making them eligible for automatic compensation. I immediately wrote a letter to President Bush asking for his administration to rectify this horrible wrong, and for some NTS workers, the situation was set right the next year.

In 2006, employees who had worked at NTS for at least 250 days from 1951 to 1962, or the atmospheric testing years, saw a tremendous victory. They were designated as part of a new Special Exposure Cohort, SEC. However, the sacrifices of NTS workers from the years of underground testing and their families went largely unacknowledged, until now. Thanks to the new SEC which goes into effect today, some measure of justice will be brought to these employees of NTS and their families.

Unfortunately, this new SEC will not put an end to the years of waiting for all NTS workers. Some won't be eligible for automatic compensation because their cancer isn't on the official list or because they worked less than 250 days, even if they were present for a large release of radiation. I will continue to fight to make sure each and every one of Nevada's Cold War veterans and their families get the compensation and justice they deserve for the enormous personal sacrifices they have made for their country. Still, I am very happy that today an estimated 1,365 claimants may be eligible for automatic compensation under the new SEC.

After submitting legislation to add the underground testing years to the SEC in 2006, my office began the long and complicated process of working with workers, survivors, and experts to submit an SEC petition. After much hard work, on February 5, 2007, I joined with three Nevadans in submitting an SEC petition arguing the scientific problems with the radiation dose reconstruction process that was denying so many NTS workers and their families the compensation and recognition they deserve. When the National Institute for Occupational Safety and Health, NIOSH, initially recommended that the petition be denied, it was the tireless work of more than a dozen individuals standing up for what is right that prevented the petition from being rejected completely. It was as a team that we persevered to gain approval for the petition and, with this approval, justice for the underground testing workers and their families.

Today's victory would not have happened without the dedicated team of NTS workers, their families, and others who fought for years to make this day possible. I would like to take a moment to thank some of these people.

First, I personally extend a heartfelt thank you to the three petitioners who devoted their time, energy, and testimony to bring this issue to the forefront. Thank you Lori Hunton, Paul Stednick, and Peter White. Lori's father, Oral Triplett worked at the Nevada Test Site and passed away when she was only 16. Paul worked at the site from 1966 to 1994 as a laborer and labor foreman. Peter worked as a laborer, pipefitter, and welder from 1985 to 1989. Each of these individuals provided invaluable insight and support necessary to complete the petition process.

I also thank Navor Valdez, Gene Campbell, Mary Bess Holloway Peterson, William Cleghorn, Robert Lemons, Cooper Michael Boyd, Patricia Niemeier, and John Funk, for sharing their stories about what really happened on the ground in Nevada.

No thank you would be complete without acknowledging Richard Miller, formerly of the Government Accountability Project, without whom this petition would never have been filed.

Finally, I send my heartfelt gratitude to all those who have worked at the Nevada Test Site and their families. I especially would like to acknowledge workers who passed away while fighting for benefits and their widows, widowers, and children surviving them who took up the fight for their loved one. Nevada's Cold War heroes have made immeasurable contributions to our nation's security, and the sacrifices they have made their health and their lives make it impossible for us to ever adequately thank them.

BBG NOMINATIONS

Mr. COBURN. Mr. President, I ask unanimous consent to have my letter to Mr. MCCONNELL, dated April 28, 2010, concerning BBG nominations printed in the RECORD.

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

U.S. SENATE,
Washington, DC, April 28, 2009.

Hon. MITCH MCCONNELL,
Minority Leader, U.S. Senate,
Washington, DC.

DEAR SENATOR MCCONNELL: I am requesting that I be consulted before the Senate enters into any unanimous consent agreements regarding Presidential nominees to the Broadcasting Board of Governors (BBG). On April 13, 2010 the Committee on Foreign Relations reported the following nominations to the Senate: Walter Isaacson, of Louisiana, as Chairman; Victor Ashe of Tennessee; Michael Lynton of California; Susan McCue of Virginia; Dennis Mulhaupt of California; and S. Enders Wimbush of Virginia.

Additionally, the Committee on Foreign Relations is still considering the nominations of Dana Perino of the District of Columbia, and Michael Meehan of Virginia to the Broadcasting Board of Governors. I request that I be consulted before the Senate enters into any unanimous consent agreements for these two nominations as well.

I have had longstanding concerns regarding transparency and effectiveness of our taxpayer funded international broadcasting agencies under the purview of the Broadcasting Board of Governors. In particular, I am troubled by the operations and management of Voice of America (VOA) given issues raised by the media, Inspector General, and former employees of VOA. Therefore, I have requested to meet with all the prospective nominees to discuss these issues. The Broadcasting Board of Governors performs a vital role regarding oversight and management of our international broadcasting. As the nation faces threats from the Middle East and in fact throughout the world, transparent and effective international broadcasting agencies are critical to ensuring our international broadcasts are in fact fulfilling the America's interests in securing peace for ourselves and our allies.

Again, thank you for protecting my rights on these nominations.

Sincerely,

TOM A. COBURN, M.D.,
U.S. Senator.

IRAN AT THE UNITED NATIONS

Mr. LEAHY. Mr. President, I read with interest, and disgust, the press reports about the comments of Iranian President Ahmadinejad at the United Nations on Monday, when he attempted to defend Iran's secret nuclear program and his government's continuing defiance of the Security Council.

I could not help but contrast his words with the efforts so many other countries have been making to prevent a nuclear weapon from ending up in the hands of a terrorist, or a nuclear arms race from taking off in the Middle East or South Asia.

In the past couple of weeks, the United States and Russia—two former enemies that once came to the brink of a nuclear war and since the 1980s have slashed their nuclear arsenals—agreed to make further reductions, and President Obama has said he wants to negotiate deeper cuts in furtherance of his long-term vision of a world without nuclear weapons.

On Monday, the Pentagon disclosed publicly the number of weapons that remain in our arsenal, which would have been unthinkable a few years ago.

There are serious efforts being made to establish nuclear weapons-free zones in South America, Africa, and the Middle East.

And at the United Nations, even countries such as Russia and China, which have traditionally sided with Iran, have all but lost patience with what Secretary Clinton rightly called Iran's ''history of making confusing, contradictory and inaccurate statements.''

Nobody questions Iran's right to develop nuclear energy for peaceful purposes. But the Nuclear Nonproliferation Treaty is, as United Nations Secretary General Ban Ki-moon has said, more important today than ever. Terrorists like the Times Square bomber could cause death and destruction on a scale we have not seen since World War II. Nuclear weapons in the hands of terrorists would have consequences for life as we know it that are almost unfathomable. And Iran has long been a state sponsor of terrorism.

President Ahmadinejad insists there is no proof that Iran is building a nuclear weapon, at the same time that he

refuses to permit the kind of international inspections that could establish whether Iran's nuclear program is only for peaceful purposes. After Iran was offered the option of sending its enriched uranium to Russia and France for refinement into fuel rods for its research reactor, he responded by stalling with one contradictory counteroffer after another, all the while continuing to enrich increasing amounts of uranium to the point when Iran now is believed to have enough to build two nuclear bombs.

Mr. President, I want to commend Secretary of State Clinton for her measured, strong statements at the United Nations about Iran's duplicitous, dangerous flaunting of the international nuclear control regime. It does not appear that anything short of sweeping, multilateral sanctions has a chance of convincing Iran's leaders to change their reckless course.

It is tragic that Iran, a country of such talented, sophisticated people—many of whom risked their lives to protest a blatantly fraudulent election and who want peaceful relations with the United States—currently has a President who is squandering Iran's resources and reputation in pursuit of a narcissistic, foolhardy quest for a nuclear bomb that will only increase his country's isolation and intensify Iran's confrontational relationship with its neighbors and the international community. The potential consequences could not be more frightening for ordinary people everywhere, including the people of Iran, and the Security Council should delay no further in imposing the strongest possible sanctions.

MILITARY FAMILIES APPRECIATION DAY

Mr. WYDEN. Mr. President, in Oregon, we just honored the return of 2,700 members of the Oregon National Guard's 41st Brigade Combat Team. Although the 41st's service in Iraq was Oregon's biggest single contribution to a war effort since World War II, it is not the only one.

The soldiers of the Oregon National Guard's 162nd Engineer Company are currently clearing roads in Afghanistan. The 1249 Engineer Battalion in Salem, OR, is preparing to deploy to Afghanistan this winter, and about 600 soldiers from Eastern Oregon will be part of the 116th Cavalry when it deploys to Iraq this fall.

I know I will return to the floor of the Senate to talk about the bravery and service of these men and women. But today I want to talk about the often unrecognized other half of these deployments—the military families that support the service members and keep things together at home. The spouses, sons, daughters, parents, grandparents and community supporters who work together and toil alone to pay the bills, get the kids to school, and help find employment while their loved ones are away.

May 8 is Military Families Appreciation Day in Oregon. On this special day, our State honors the dedication and service of military families and veterans who have helped make America's military the strongest the world has ever seen.

Being left behind when a loved one goes to war is not an easy mission. Yet our military families continue to make the difficult sacrifices, and call upon their inner reserves, to nurture family life so that their service member can focus on the business at hand.

Our military spouses are the glue that holds our military families together. They unselfishly give up their husband or wife, their partner and friend to help serve our Nation. They celebrate important events like birthdays, anniversaries, and sometimes a child's first step or first word alone. They assume the difficult role of being both mother and father—shouldering the responsibility of creating and nurturing a loving family environment when their loved one is away. Their strength and determination are examples to the rest of the country.

And to all of the grandparents and friends who step up when our single-parent service members are called to duty, I thank you. You unselfishly answer the Nation's call by caring for our future generation. You help relieve the pressures of military service by making sure our service members' children are safe, happy, and loved. Stand tall, stand proud. You, too, are our unsung heroes.

Finally, I would like to recognize the sons and daughters who grow up in a military family. As the children of America's defenders, they cope with unbelievable circumstances. The smells of shoe polish, starch, and Brasso may remind them of home more than the smells of cookies and apple pie. Their mothers and fathers are called to duty at a moment's notice, and they have no choice but to be strong, even when it hurts to say goodbye. Their contribution to the Nation and personal strength does not go unnoticed. They are our future and represent the best America has to offer.

Today's military family—spouses, sons, daughters, parents, grandparents and community—inspire us through spirit and strength. They proudly wave flags and keep the candles burning as a reminder of those who are gone.

Their dedication reminds us all that the U.S. flag is brilliant indeed; patriotic songs are not just reserved for the fourth of July; that a parting kiss can hold for months; and that shared tears can somehow bring us closer together. They put their own priorities aside. They take care of one another. They take care of America.

So to all military families, I thank you. Thank you for your service to your family, our community, and to our Nation.

ADDITIONAL STATEMENTS

TRIBUTE TO CYNTHIA L. MUNSCH

• Mr. CONRAD. Mr. President, I want to take a moment to honor a North Dakota woman retiring from a long and honorable career dedicated to assisting U.S. military veterans throughout Burleigh County in the State of North Dakota.

Cindy Munsch, of rural New Salem, ND, started her professional career as a teacher, educating young people on the Standing Rock Reservation, in the Bismarck Public Schools, and at United Tribes Technical College.

In 1985, after 14 years in education, Cindy commenced employment with the Burleigh County Veterans Service Office. Initially the office secretary, Cindy's outstanding work ethic and duty performance was recognized by the Burleigh County Commission with promotion to the position of Deputy County Service Officer. She is now retiring after 25 years of service to our veterans.

Cindy has assisted thousands of veterans with obtaining needed benefits and services. She is recognized by her peers across the State as an expert in veterans benefits, and she frequently provides advice and counsel at the request of other veterans service providers. She also assists in the administration of the veterans transportation program, which provides van transport to veterans from western and central North Dakota to the VA Regional Medical Center in Fargo.

Seeing a need for women veterans in the area to have the opportunity to address issues and experiences unique to their gender, in conjunction with staff from the Bismarck Vet Center, Cindy started a Women Veterans Group that meets monthly for the purpose of discussion and support, education and community service projects. In addition, Cindy cochaired the inaugural Women Veterans Summit, held recently in Bismarck, to bring women veterans issues into focus and to provide a networking opportunity for women veterans from throughout the State.

There is no more admirable vocation than one of service to others. Cindy Munsch dedicated her professional career to ensuring that our service members, who stepped forward to serve the Nation by preserving our freedom and way of life, receive the benefits and assistance they deserve. I am honored to salute Cindy Munsch for her dedicated and selfless service to our veterans for the past 25 years and to congratulate her on her retirement from the Burleigh County Veterans Service Office.•

TRIBUTE TO DR. JOSEPH W. BASCUAS

• Mr. KERRY. Mr. President, I would like to thank Dr. Joseph W. Bascuas for his invaluable contributions as interim president to Becker College and

for his dedication to quality education and high academic standards.

Becker College, which traces its history to 1784, is comprised of two separate campuses only 6 miles apart, one in Leicester and the other in Worcester, MA. The college serves more than 1,700 students from 18 States and 12 countries, and offers more than 25 diverse, top-quality bachelor degree programs in unique, high-demand career niches and serves as an invaluable community partner. In September of 2008 the Becker College Board of Trustees named Dr. Bascuas as interim president and since that time he has served admirably.

Dr. Bascuas brought more than 25 years of experience in higher education to Becker College. In addition to his teaching and leading experiences, he has written and coauthored numerous papers on psychological topics and has presented at symposia and conferences. Dr. Bascuas served as president of Medaille College, Buffalo, NY; founding president of Argosy University Atlanta, GA, campus; and held administrative and teaching positions at the Georgia School of Professional Psychology, Antioch University, Nova/Southeastern University and Salve Regina University. Moreover, he served recently as a site visit team chair for the Middle States Commission on Higher Education, and served on the National Collegiate Athletic Association Division III Presidents Council. He received a B.A. from LaSalle University and an M.A. and a Ph.D. from Temple University.

Dr. Bascuas took on the role of interim president during a challenging time and was not content with simply being a placeholder. Dr. Bascuas was willing to tackle serious issues including technology, financial aid, and improving retention and graduation rates. He successfully positioned the College for significant growth rates and progress in the future, and for that, the citizens of Massachusetts greatly appreciate and commend him for his efforts.

Mr. President, I would like to wish Dr. Joseph W. Bascuas continued success in the future. I ask my colleagues to join me in thanking Dr. Joseph W. Bascuas for his services at Becker College.●

125TH ANNIVERSARY OF ''OLD FOLKS SINGING''

● Mrs. LINCOLN. Mr. President, today I commemorate the 125th anniversary of ''Old Folks Singing,'' a time-honored tradition in Tull, AR.

Each year, Tull residents and other Arkansans gather at Ebenezer United Methodist Church on the third Sunday of May to sing gospel hymns from the church's original Christian Harmony and Cokesbury hymnals. Since 1885, this event has brought together Arkansans for praise, worship, and fellowship.

Old Folks Singing is steeped in tradition. As event organizers proudly say, ''not much will change this year.'' The day begins with a prayer and welcome address before attendees join in song. After a potluck lunch and memorial service, the afternoon's music gets underway, ending with prayer and the final hymn, ''God Be with You 'Till We Meet Again.''

Mr. President, I also recognize the organizers of ''Old Folks Singing,'' including President Richard Tull, Vice President Wilson DuVall, Secretary Karen Westbrook, Treasurer Lena Ramsey, and Chaplain John Victor Burton. Numerous other volunteers help the day run smoothly by coordinating lunch, serving as ushers, creating the church bulletin, leading songs, and various other tasks.

''Old Folks Singing'' represents the best of our Arkansas communities. In good times and bad, Arkansans come together to share faith, family, and community. I ask my colleagues to join me in honoring this great Arkansas tradition.●

TRIBUTE TO JUDY TENENBAUM

● Mrs. LINCOLN. Mr. President, today I wish to honor Little Rock philanthropist Judy Tenenbaum and her lifetime of service for the people of our great State of Arkansas.

Judy will be recognized during this year's ''Red Jacket Ball,'' an annual benefit gala for City Year Little Rock/North Little Rock, a leading nonprofit organization that unites young people of all backgrounds for a year of full-time service. Throughout communities across the U.S., City Year members are easily recognizable by their red jackets, which symbolize the power of citizen service and provide the namesake for their annual fundraiser.

This year marks the fifth anniversary of the Red Jacket Ball, and Judy joins a distinguished list of Arkansas philanthropists to have received this honor. Judy donates her time and resources to countless organizations throughout Central Arkansas, with causes ranging from the arts to cancer research to community development. Judy has touched thousands of Arkansans who may never know her name but who feel her generosity and support.

Mr. President, I am proud to call Judy a friend. We have worked together on a number of charitable projects throughout the years, and she is always willing and able to lend support where it is needed the most. I join all Arkansans in recognizing Judy with the Red Jacket Ball Lifetime of Service Award from City Year Little Rock/North Little Rock.●

TRIBUTE TO RICHARD L. ROCA, PH.D.

● Ms. MIKULSKI. Mr. President, I wish to pay tribute to a distinguished scholar, accomplished leader, and a treasured member of the Maryland family, Dr. Richard Roca, director of the Johns Hopkins University Applied Physics Lab, who will soon step down after a decade of distinguished leadership and service in that position.

The Johns Hopkins University Applied Physics Lab is a national treasure. Since it was created in the early days of the Second World War, APL has helped maintain our Nation's military, our intelligence agencies, our space community, and our medical profession on the cutting edge of technological achievements. Now the largest university affiliated research lab in the Nation, the dedicated scientists, engineers, technicians, and researchers at APL have time and again solved the problems no one thought possible, and in the process kept us safe and secure. Since 2000, Dr. Roca has led this uniquely talented and diverse team of world renowned scientists as they rose to the challenges of the post-September 11 world.

Dr. Roca was the right leader at the right time to guide APL through these fast-paced and challenging times. Like many visionary leaders in his field, Dr. Roca understands that for a forward-leaning, high-tech institution like the Johns Hopkins Applied Physics Lab can never be static. He knows that in order for APL to play its role solving the problems of the 21st century and helping our Nation's national security apparatus adjust to an ever-changing world, that APL itself must continually be updating and reinventing itself.

Dr. Roca's leadership over the last 10 years has embodied that mindset on continual improvement and self-reinvention. During his tenure, APL adapted to a changing world by expanding its roles and capabilities into homeland security, cyber defense, space exploration, and information-centric operations. After September 11, under Dr. Roca's leadership APL established the Electronic Surveillance System for Early Notification of Community-Based Epidemics—ESSENCE—at APL to monitor the threats from new diseases in the United States. That system is now on watch across the country to provide early warnings against new epidemics created by nature or by terrorist activity. Dr. Roca was also one of the first to recognize the threat from cyber attacks and call for comprehensive cyber defenses. It was under his leadership that APL established major partnerships with the National Security Agency to develop and test new cybersecurity tools. These are just a few examples of how Dr. Roca saw the world changing and mobilized APL to meet the new challenges. We are safer for his leadership in keeping APL on the cutting edge of helping counter new and emerging threats to our national security.

Dr. Roca also kept APL on the cusp of new explorations in space and science. During his tenure, APL helped design, build, and send satellites into space that have explored the Eros asteroid; that are enroute to explore

Mercury and Pluto, and which play valuable roles in understanding the Sun's impact on Earth's atmosphere. These contributions to understanding and exploring our universe cannot be overstated. They are major achievements that will lead to decades of scientific study and achievement.

So as Dr. Roca comes to the end of his tenure, I want to thank him for his tireless service, his devotion to excellence, his dedication to the mission of the Applied Physics Lab, and for his inspired leadership in keeping APL at the cutting edge of keeping our Nation safe and advancing valuable science in hundreds of different areas. We wish you the very best, Dr. Roca, in whatever the next chapter in your professional life holds for you. Wherever that takes you, know that you will always and forever be a member of the Maryland family.●

TRIBUTE TO DOROTHY CLARA KRALICEK AND DELLA MARIE GOEGEN

● Mr. THUNE. Mr. President, today I wish to recognize Dorothy Clara Kralicek and Della Marie Goegen.

Dorothy and Della were born on April 8, 1920, at the family farm near Menominee, NE, where they learned about the true riches of family life. Today, they both live in Yankton, SD, continuing to pass along family values and faith as matriarchs of their vast families. Between them, they have 18 children and numerous grandchildren.

Dorothy and Della are both excellent homemakers and have recently enjoyed traveling together to several sites in Europe. On Mother's Day, May 9, 2010, both ladies will be honored by a gathering of family and friends in Sioux Falls, SD.

This honorable recognition is clearly well deserved. Dorothy and Della's dedication to their families is a shining example of the steadfast commitment, devotion, and inspiration they have freely given to everyone throughout their lives.

It gives me great pleasure to commemorate the 90th birthdays of Dorothy and Della and to wish them continued health and happiness in the years to come.●

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 Committee on Armed Services.

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

PROPOSED AGREEMENT FOR COOPERATION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA CONCERNING PEACEFUL USES OF NUCLEAR ENERGY—PM 52

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

To the Congress of the United States:

I am pleased to transmit to the Congress, pursuant to sections 123b. and 123d. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b), (d)) (the ''Act''), the text of a proposed Agreement between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Nuclear Energy. I am also pleased to transmit my written approval, authorization, and determination concerning the Agreement, and an unclassified Nuclear Proliferation Assessment Statement (NPAS) concerning the Agreement. In accordance with section 123 of the Act, as amended by title XII of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277), a classified annex to the NPAS, prepared by the Secretary of State in consultation with the Director of National Intelligence, summarizing relevant classified information, will be submitted to the Congress separately. The joint memorandum submitted to me by the Secretaries of State and Energy and a letter from the Chairman of the Nuclear Regulatory Commission stating the views of the Commission are also enclosed.

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

The proposed Agreement provides a comprehensive framework for peaceful nuclear cooperation with Australia based on a mutual commitment to nuclear nonproliferation. The Agreement has an initial term of 30 years from the date of its entry into force, and will continue in force thereafter for additional periods of 5 years each, unless terminated by either party on 6 months' advance written notice at the end of the initial 30-year term or at the conclusion of any of the additional 5-year periods. The proposed Agreement permits the transfer of information, material, equipment (including reactors), and components for nuclear research and nuclear power production. It does not permit transfers of Restricted Data, sensitive nuclear technology, sensitive nuclear facilities, or major critical components of such facilities. In the event of termination of the proposed Agreement, key nonproliferation conditions and controls continue with respect to material, equipment, and components subject to the proposed Agreement.

Australia is a non-nuclear weapon state party to the Treaty on the Nonproliferation of Nuclear Weapons (NPT). Australia has concluded a Safeguards Agreement and Additional Protocol with the International Atomic Energy Agency. Australia is a party to the Convention on the Physical Protection of Nuclear Material, which establishes international standards of physical protection for the use, storage, and transport of nuclear material. It is also a member of the Nuclear Suppliers Group, whose non-legally binding guidelines set forth standards for the responsible export of nuclear commodities for peaceful use. A more detailed discussion of Australia's domestic civil nuclear activities and its nuclear nonproliferation policies and practices, including its nuclear export policies and practices, is provided in the NPAS and the NPAS classified annex submitted to the Congress separately.

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

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

BARACK OBAMA.

THE WHITE HOUSE, *May 5, 2010*.

MESSAGES FROM THE HOUSE

At 10:25 a.m., a message from the House of Representatives, delivered by Mr. Novotny, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 24. An act to redesignate the Department of the Navy as the Department of the Navy and Marine Corps.

At 1:13 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that pursuant to Executive Order No. 12131, and the order of the House of January 6, 2009, the Speaker appoints the following Members of the House of Representatives to the President's Export Council: Ms. LINDA T. SÁNCHEZ of California, Mr. WU of Oregon, and Mr. SCHAUER of Michigan.

At 2:01 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 bill, in which it requests the concurrence of the Senate:

H.R. 5160. An act to extend the Caribbean Basin Economic Recovery Act, to provide customs support services to Haiti, and for other purposes.

ENROLLED BILL SIGNED

The PRESIDENT pro tempore (Mr. BYRD) announced that he had signed the following enrolled bill, which was previously signed by the Speaker of the House:

H.R. 3714. An act to amend the Foreign Assistance Act of 1961 to include the Annual Country Reports on Human Rights Practices information about freedom of the press in foreign countries, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 24. An act to redesignate the Department of the Navy as the Department of the Navy and Marine Corps; to the Committee on Armed Services.

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–5733. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, a report relative to a violation of the Antideficiency Act that occurred within the Department of the Army and was assigned case number 06–04; to the Committee on Appropriations.

EC–5734. 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 ''Noxious Weeds; Old World Climbing Fern and Maidenhair Creeper'' (Docket No. APHIS–2008–0097) received in the Office of the President of the Senate on May 4, 2010; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5735. A joint communication from the Secretary of the Department of Agriculture and the Secretary of the Department of Transportation, transmitting, pursuant to law, a report entitled ''Study of Rural Transportation Issues''; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5736. A communication from the Secretary of the Air Force, transmitting, pursuant to law, a report relative to the Program Acquisition Unit Cost and the Average Procurement Unit Cost for the C–130 AMP program exceeding the Acquisition Program Baseline values by more than 15 percent; to the Committee on Armed Services.

EC–5737. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, notification of the Department's intent to close the Defense commissary store at Camp Eagle, Korea; to the Committee on Armed Services.

EC–5738. A communication from the General Counsel of the Department of Defense, transmitting a legislative proposal relative to expansion of eligibility for concurrent receipt of military retirement pay and veterans' disability compensation to medically retired service members, received in the Office of the President of the Senate on April 29, 2010; to the Committee on Armed Services.

EC–5739. A communication from the General Counsel of the Department of Commerce, transmitting proposed legislation relative to Public Works and Economic Development improvement; to the Committee on Environment and Public Works.

EC–5740. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment—Update for Rate Year Beginning July 1, 2010 (RY2011)'' (RIN0938–AP83) received in the Office of the President of the Senate on May 3, 2010; to the Committee on Finance.

EC–5741. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements'' (RIN0938–AQ01) received in the Office of the President of the Senate on May 3, 2010; to the Committee on Finance.

EC–5742. A communication from the Program Manager, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Medicaid Programs; State Flexibility for Medicaid Benefit Packages'' (RIN0938–AP72) received in the Office of the President of the Senate on May 3, 2010; to the Committee on Finance.

EC–5743. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, a report entitled ''Report of the Proceedings of the Judicial Conference of the United States'' for the September 2009 session and the June 2009 special session; to the Committee on the Judiciary.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–99. A concurrent resolution adopted by the Senate of the State of Louisiana memorializing Congress to utilize the power of technology to boost American productivity and performance by consulting with state legislatures, education, and computer organizations to ensure that every student has access to a low-cost laptop; to the Committee on Health, Education, Labor, and Pensions.

SENATE CONCURRENT RESOLUTION NO. 19

Whereas, the personal computer is an indispensable twenty-first century learning tool; and

Whereas, the decreasing cost of technology makes it possible to equip every student with a portable, personal computer; and

Whereas, low-cost laptops are ''twenty-first century textbooks'' due to their capacity to store thousands of books and research materials; and

Whereas, computer technology has been shown to improve academic performance, attendance, and enthusiasm in classrooms; and

Whereas, according to a survey by the November 2007 Pew Internet & American Life Project, one-fourth of Americans do not have computers at home; and

Whereas, the ''digital divide'' most sharply impacts the poor, racial and ethnic minorities, people with disabilities, and residents of rural areas; and

Whereas, attaining universal access to communication technology is a goal spelled out in the 1996 Telecommunications Act; and

Whereas, a nationwide push among state leaders to equip students with laptops promises to fuel a new generation of math, science, and technology innovators; and

Whereas, computer proficiency is increasingly required by employers and institutions of higher learning; and

Whereas, previous technology-focused efforts, such as the Technology Opportunities Program and E-Rate, resulted in newfound information and communication access for millions of students and thousands of schools; and

Whereas, the provision of low-cost laptops for all students would increase learning in core subjects, improve literacy in technology essential for twenty-first century skills, and stimulate creativity, all necessary in reaching the goal of academic excellence in schools as well as developing a technical proficiency at an early age. Therefore, be it

Resolved, That the Legislature of Louisiana memorializes the Congress of the United States to utilize the power of technology to boost American productivity and performance by consulting with state legislatures, education, and computer organizations to ensure that every student has access to a low-cost laptop. Be it further

Resolved, That a copy of this Resolution shall be transmitted to the secretary of the United States Senate and the clerk of the United States House of Representatives and to each member of the Louisiana delegation to the United States.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mrs. LINCOLN, from the Committee on Agriculture, Nutrition, and Forestry, without amendment:

S. 3307. An original bill to reauthorize child nutrition programs, and for other purposes (Rept. No. 111–178).

By Mr. LIEBERMAN, from the Committee on Homeland Security and Governmental Affairs, with an amendment in the nature of a substitute:

S. 920. A bill to amend section 11317 of title 40, United States Code, to improve the transparency of the status of information technology investments, to require greater accountability for cost overruns on Federal information technology investment projects, to improve the processes agencies implement to manage information technology investments, to reward excellence in information technology acquisition, and for other purposes (Rept. No. 111–179).

By Mrs. BOXER, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 373. A bill to amend title 18, United States Code, to include constrictor snakes of the species Python genera as an injurious animal (Rept. No. 111–180).

By Mrs. BOXER, from the Committee on Environment and Public Works, without amendment:

S. 1421. A bill to amend section 42 of title 18, United States Code, to prohibit the importation and shipment of certain species of carp (Rept. No. 111–181).

S. 1519. A bill to provide for the eradication and control of nutria in Maryland, Louisiana, and other coastal States (Rept. No. 111–182).

S. 1965. A bill to authorize the Secretary of the Interior to provide financial assistance to the State of Louisiana for a pilot program

to develop measures to eradicate or control feral swine and to assess and restore wetlands damaged by feral swine (Rept. No. 111–183).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. LEVIN for the Committee on Armed Services.

*Solomon B. Watson IV, of New York, to be General Counsel of the Department of the Army.

*Donald L. Cook, of Washington, to be Deputy Administrator for Defense Programs, National Nuclear Security Administration.

*Sharon E. Burke, of Maryland, to be Director of Operational Energy Plans and Programs.

*Katherine Hammack, of Arizona, to be an Assistant Secretary of the Army.

*Michael J. McCord, of Virginia, to be Principal Deputy Under Secretary of Defense (Comptroller).

*Elizabeth A. McGrath, of Virginia, to be Deputy Chief Management Officer of the Department of Defense.

Air Force nomination of Colonel Kenneth J. Moran, to be Brigadier General.

Air Force nomination of Lt. Gen. Edward A. Rice, Jr., to be General.

Air Force nominations beginning with Colonel David W. Allvin and ending with Colonel Burke E. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on March 17, 2010.

Air Force nominations beginning with Brigadier General Mark A. Barrett and ending with Brigadier General Margaret H. Woodward, which nominations were received by the Senate and appeared in the Congressional Record on April 19, 2010.

Air Force nomination of Maj. Gen. Eric E. Fiel, to be Lieutenant General.

Army nomination of Lt. Gen. Keith B. Alexander, to be General.

Army nomination of Lt. Gen. Charles H. Jacoby, Jr., to be Lieutenant General.

Army nomination of Maj. Gen. Daniel P. Bolger, to be Lieutenant General.

Army nomination of Lt. Gen. David P. Fridovich, to be Lieutenant General.

Army nomination of Brig. Gen. Donald C. Leins, to be Major General.

Army nomination of Col. Nadja Y. West, to be Brigadier General.

Army nomination of Col. Ming T. Wong, to be Major General.

Navy nomination of Vice Adm. James A. Winnefeld, Jr., to be Admiral.

Navy nomination of Rear Adm. Carol M. Pottenger, to be Vice Admiral.

Navy nomination of Rear Adm. Scott R. Van Buskirk, to be Vice Admiral.

Navy nomination of Rear Adm. Mark I. Fox, to be Vice Admiral.

Navy nomination of Vice Adm. David J. Venlet, to be Vice Admiral.

Navy nomination of Rear Adm. (lh) Elizabeth S. Niemyer, to be Rear Admiral.

Navy nomination of Capt. Margaret G. Kibben, to be Rear Admiral (lower half).

Navy nomination of Capt. David M. Boone, to be Rear Admiral (lower half).

Navy nominations beginning with Capt. Robert J. A. Gilbeau and ending with Capt. Glenn C. Robillard, which nominations were received by the Senate and appeared in the Congressional Record on April 12, 2010.

Navy nominations beginning with Captain John C. Aquilino and ending with Captain Michael S. White, which nominations were received by the Senate and appeared in the Congressional Record on April 14, 2010.

Navy nominations beginning with Capt. Brett C. Heimbigner and ending with Capt. Matthew J. Kohler, which nominations were received by the Senate and appeared in the Congressional Record on April 14, 2010.

Navy nominations beginning with Capt. James D. Syring and ending with Capt. Gregory R. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on April 14, 2010.

Navy nomination of Capt. Mathias W. Winter, to be Rear Admiral (lower half).

Navy nomination of Rear Adm. (lh) Mark L. Tidd, to be Rear Admiral.

Navy nomination of Rear Adm. Allen G. Myers, to be Vice Admiral.

Marine Corps nomination of Lt. Gen. Duane D. Thiessen, to be Lieutenant General.

Marine Corps nomination of Lt. Gen. Dennis J. Hejlik, to be Lieutenant General.

Marine Corps nominations beginning with Brigadier General Ronald L. Bailey and ending with Brigadier General Robert S. Walsh, which nominations were received by the Senate and appeared in the Congressional Record on April 12, 2010. (minus 1 nominee: Brigadier General Kenneth F. McKenzie, Jr.)

Marine Corps nominations beginning with Colonel Brian D. Beaudreault and ending with Colonel Gary L. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on April 19, 2010.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDs on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Air Force nominations beginning with Randall M. Ashmore and ending with James A. Sperl, which nominations were received by the Senate and appeared in the Congressional Record on December 11, 2009.

Air Force nomination of Carolyn Ann Moore Benyshek, to be Colonel.

Air Force nominations beginning with Elizabeth R. Andersondoze and ending with Karen M. Wharton, which nominations were received by the Senate and appeared in the Congressional Record on March 10, 2010.

Air Force nominations beginning with Sandra S. Aguillon and ending with Shawna A. Zierke, which nominations were received by the Senate and appeared in the Congressional Record on April 21, 2010.

Air Force nomination of Gerard G. Couvillion, to be Colonel.

Air Force nomination of Eric W. Adcock, to be Major.

Air Force nominations beginning with Drew C. Johnson and ending with Justin P. Olsen, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Ronald J. Dykstra and ending with Anthony T. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on March 9, 2010. (minus 4 nominees: Cardell J. Hervey; Patrick L. Mallett; Christopher R. Reid; Scott H. Sinkular)

Army nomination of Stephen T. Sauter, to be Colonel.

Army nomination of Miles T. Gengler, to be Major.

Army nominations beginning with Dino J. Besinga and ending with Sang J. Won, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2010.

Army nominations beginning with James J. Aiello and ending with Walter C. Perez, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2010.

Army nomination of Ramsey B. Salem, to be Colonel.

Army nomination of Douglas B. Guard, to be Major.

Army nomination of Cheryl Maguire, to be Major.

Army nomination of Shirley M. Ochoa-Dobies, to be Major.

Army nominations beginning with David W. Terhune and ending with Paul E. Wright, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Juan G. Lopez and ending with Robert G. Swarts, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Christopher T. Blais and ending with Jill D. Simonson, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Darrell W. Carpenter and ending with Mist L. Wray, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Jenifer L. Breaux and ending with Leon M. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Tyler M. Abercrombie and ending with D010186, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Gregory J. Ady and ending with G010044, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Edward V. Abrahamson and ending with D006165, which nominations were received by the Senate and appeared in the Congressional Record on April 26, 2010.

Army nominations beginning with Carl E. Steinbeck and ending with Jennifer M. Mckenna, which nominations were received by the Senate and appeared in the Congressional Record on April 28, 2010.

Army nominations beginning with James L. Cassarella and ending with Ronald A. Westfall, which nominations were received by the Senate and appeared in the Congressional Record on April 29, 2010.

Army nominations beginning with Anthony Abbott and ending with Jeffrey F. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on April 29, 2010.

Marine Corps nominations beginning with David F. Allen and ending with Marvin A. Williams, which nominations were received by the Senate and appeared in the Congressional Record on December 21, 2009.

Marine Corps nominations beginning with Jose M. Acevedo and ending with Chad W. Zimmerman, which nominations were received by the Senate and appeared in the Congressional Record on December 21, 2009.

Marine Corps nominations beginning with Walter T. Anderson and ending with Kenneth M. Woodard, which nominations were received by the Senate and appeared in the Congressional Record on February 4, 2010.

Marine Corps nominations beginning with Stephen J. Acosta and ending with Luis R. Zamarripa, which nominations were received

by the Senate and appeared in the Congressional Record on February 4, 2010.

Marine Corps nomination of Peter W. McDaniel, to be Lieutenant Colonel.

Marine Corps nomination of Dean R. Keck, to be Lieutenant Colonel.

Navy nomination of James H. Jones, to be Captain.

Navy nomination of Enrique G. Molina, to be Commander.

Navy nomination of Scott A. Carpenter, to be Commander.

Navy nomination of Christopher C. Richard, to be Commander.

Navy nomination of Jacob C. Hinz, to be Commander.

Navy nomination of Stanley E. Hovell, to be Lieutenant Commander.

Navy nomination of Rivka L. Weiss, to be Lieutenant Commander.

Navy nomination of Shawn M. Stebbins, to be Lieutenant Commander.

Navy nomination of Henry D. Lange, to be Lieutenant Commander.

Navy nomination of Christie M. Quietmeyer, to be Lieutenant Commander.

Navy nomination of Beth A. Hoffman, to be Lieutenant Commander.

Navy nominations beginning with John W. Cheatham and ending with Noburo Yamaki, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2010.

Navy nominations beginning with Gregory M. Saracco and ending with Luke A. Zabrocki, which nominations were received by the Senate and appeared in the Congressional Record on March 25, 2010.

Navy nominations beginning with John T. Fojut and ending with Anne D. Restrepo, which nominations were received by the Senate and appeared in the Congressional Record on April 14, 2010.

Navy nomination of Gregory J. Murrey, to be Captain.

Navy nomination of Patrick V. Bailey, to be Captain.

Navy nomination of Andrew K. Bailey, to be Lieutenant Commander.

Navy nomination of Todd J. Oswald, to be Lieutenant Commander.

Navy nomination of Maria D. Julia-Montanez, to be Lieutenant Commander.

Navy nominations beginning with William T. Carney and ending with Andrea S. Stiller, which nominations were received by the Senate and appeared in the Congressional Record on April 28, 2010.

Navy nomination of Frederick Harris, to be Commander.

Navy nomination of Paul N. Langevin, to be Lieutenant Commander.

By Mr. HARKIN for the Committee on Health, Education, Labor, and Pensions.

Joshua Gotbaum, of the District of Columbia, to be Director of the Pension Benefit Guaranty Corporation.

Jonathan Andrew Hatfield, of Virginia, to be Inspector General, Corporation for National and Community Service.

Eduardo M. Ochoa, of California, to be Assistant Secretary for Postsecondary Education, Department of Education.

James L. Taylor, of Virginia, to be Chief Financial Officer, Department of Labor.

Robert Wedgeworth, of Illinois, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2013.

Carla D. Hayden, of Illinois, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2014.

John Coppola, of Florida, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2013.

Winston Tabb, of Maryland, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2013.

Lawrence J. Pijeaux, Jr., of Alabama, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2014.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

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 Mrs. LINCOLN:

S. 3307. An original bill to reauthorize child nutrition programs, and for other purposes; from the Committee on Agriculture, Nutrition, and Forestry; placed on the calendar.

By Mr. NELSON of Florida (for himself, Mr. SANDERS, Mr. REED, Mrs. FEINSTEIN, and Mrs. BOXER):

S. 3308. A bill to suspend certain activities in the outer Continental Shelf until the date on which the joint investigation into the Deepwater Horizon incident in the Gulf of Mexico has been completed, and for other purposes; to the Committee on Energy and Natural Resources.

By Ms. MURKOWSKI:

S. 3309. A bill to amend the Internal Revenue Code of 1986 to modify the rate of tax for the Oil Spill Liability Trust Fund; to the Committee on Finance.

By Mr. JOHNSON:

S. 3310. A bill to designate certain wilderness areas in the National Forest System in the State of South Dakota; to the Committee on Energy and Natural Resources.

By Mr. KERRY:

S. 3311. A bill to improve and enhance the capabilities of the Department of Defense to prevent and respond to sexual assault in the Armed Forces, and for other purposes; to the Committee on Armed Services.

By Mrs. GILLIBRAND:

S. 3312. A bill to amend the Homeland Security Act of 2002 to authorize the Securing the Cities Initiative of the Department of Homeland Security, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. REID:

S. 3313. A bill to withdraw certain land located in Clark County, Nevada from location, entry, and patent under the mining laws and disposition under all laws pertaining to mineral and geothermal leasing or mineral materials, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BROWN of Ohio:

S. 3314. A bill to require the Secretary of Veterans Affairs and the Appalachian Regional Commission to carry out a program of outreach for veterans who reside in Appalachia, and for other purposes; to the Committee on Veterans' Affairs.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 3315. A bill to amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program; to the Committee on Finance.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 3316. A bill to provide for flexibility and improvements in elementary and secondary education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. KERRY (for himself, Mr. CORKER, Mr. CARDIN, and Mr. DURBIN):

S. 3317. A bill to authorize appropriations for fiscal years 2010 through 2014 to promote long-term, sustainable rebuilding and development in Haiti, and for other purposes; to the Committee on Foreign Relations.

By Mrs. GILLIBRAND:

S. 3318. A bill to amend title XVIII of the Social Security Act to eliminate contributing factors to disparities in breast cancer treatment through the development of a uniform set of consensus-based breast cancer treatment performance measures for a 6-year quality reporting system and value-based purchasing system under the Medicare Program; to the Committee on Finance.

By Ms. COLLINS (for herself and Mr. DODD):

S. 3319. A bill to amend the Internal Revenue Code of 1986 to provide recruitment and retention incentives for volunteer emergency service workers; to the Committee on Finance.

By Mr. McCONNELL (for himself, Mrs. FEINSTEIN, Mr. McCAIN, Mr. DURBIN, Mr. GREGG, Mr. LIEBERMAN, and Mr. DODD):

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

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Ms. LANDRIEU (for herself, Mr. ALEXANDER, Mr. BAYH, Mr. BURR, Mr. CARPER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GREGG, Mr. LIEBERMAN, and Mr. VITTER):

S. Res. 514. A resolution congratulating the students, parents, teachers, and administrators of charter schools across the United States for ongoing contributions to education and supporting the ideals and goals of the 11th annual National Charter Schools Week, to be held May 2 through May 8, 2010; considered and agreed to.

ADDITIONAL COSPONSORS

S. 632

At the request of Mr. BAUCUS, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 632, a bill to amend the Internal Revenue Code of 1986 to require that the payment of the manufacturers' excise tax on recreational equipment be paid quarterly.

S. 718

At the request of Mr. HARKIN, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 718, a bill to amend the Legal Services Corporation Act to meet special needs of eligible clients, provide for technology grants, improve corporate practices of the Legal Services Corporation, and for other purposes.

S. 1158

At the request of Ms. STABENOW, the names of the Senator from Virginia (Mr. WEBB) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. 1158, a bill to authorize the Secretary of Health and Human Services to conduct activities to rapidly advance treatments for spinal muscular atrophy, neuromuscular disease, and other pediatric diseases, and for other purposes.

S. 3035

At the request of Mr. BAUCUS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 3035, a bill to require a report on the establishment of a Polytrauma Rehabilitation Center or Polytrauma Network Site of the Department of Veterans Affairs in the northern Rockies or Dakotas, and for other purposes.

S. 3062

At the request of Mr. CARPER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 3062, a bill to extend credits related to the production of electricity from offshore wind, and for other purposes.

S. 3073

At the request of Mr. LEVIN, the name of the Senator from Illinois (Mr. BURRIS) was added as a cosponsor of S. 3073, a bill to amend the Federal Water Pollution Control Act to protect and restore the Great Lakes.

S. 3078

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 3078, a bill to provide for the establishment of a Health Insurance Rate Authority to establish limits on premium rating, and for other purposes.

S. 3146

At the request of Mr. CRAPO, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3146, a bill to amend the Internal Revenue Code to provide a tax credit to individuals who enter into agreements to protect the habitats of endangered and threatened species, and for other purposes.

S. 3199

At the request of Ms. SNOWE, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Utah (Mr. BENNETT) were added as cosponsors of S. 3199, a bill to amend the Public Health Service Act regarding early detection, diagnosis, and treatment of hearing loss.

S. 3201

At the request of Mr. UDALL of Colorado, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3201, a bill to amend title 10, United States Code, to extend TRICARE coverage to certain dependents under the age of 26.

S. 3206

At the request of Mr. HARKIN, the name of the Senator from Colorado (Mr. BENNET) was added as a cosponsor of S. 3206, a bill to establish an Education Jobs Fund.

S. 3213

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

S. 3265

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

S. 3275

At the request of Mr. BAUCUS, the names of the Senator from Indiana (Mr. LUGAR) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 3275, a bill to extend the Caribbean Basin Economic Recovery Act, to provide customs support services to Haiti, and for other purposes.

S. 3295

At the request of Mr. SCHUMER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3295, a bill to amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

S. 3296

At the request of Mr. INHOFE, the names of the Senator from Utah (Mr. BENNETT) and the Senator from New Hampshire (Mr. GREGG) were added as cosponsors of S. 3296, a bill to delay the implementation of certain final rules of the Environmental Protection Agency in States until accreditation classes are held in the States for a period of at least 1 year.

S. 3305

At the request of Mr. MENENDEZ, the names of the Senator from Ohio (Mr. BROWN) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 3305, a bill to amend the Oil Pollution Act of 1990 to require oil polluters to pay the full cost of oil spills, and for other purposes.

S. 3306

At the request of Mr. MENENDEZ, the names of the Senator from Ohio (Mr. BROWN) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of S. 3306, a bill to amend the Internal Revenue Code of 1986 to require polluters to pay the full cost of oil spills, and for other purposes.

S. RES. 278

At the request of Mrs. GILLIBRAND, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of S. Res. 278, a resolution honoring the Hudson River School painters for their contributions to the United States Senate.

S. RES. 411

At the request of Mrs. LINCOLN, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from New Hampshire (Mrs. SHAHEEN) were added as cosponsors of S. Res. 411, a resolution recognizing the importance and sustainability of the United States hardwoods industry and urging that United States hardwoods and the products derived from United States hardwoods be given full consideration in any program to promote construction of environmentally preferable commercial, public, or private buildings.

AMENDMENT NO. 3730

At the request of Mr. FEINGOLD, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of amendment No. 3730 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3733

At the request of Mr. BROWN of Ohio, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of amendment No. 3733 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3738

At the request of Mr. SANDERS, the names of the Senator from Washington (Ms. CANTWELL), the Senator from Alaska (Mr. BEGICH) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of amendment No. 3738 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3743

At the request of Mr. CORKER, the name of the Senator from Idaho (Mr. RISCH) was added as a cosponsor of amendment No. 3743 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3749

At the request of Mr. TESTER, the names of the Senator from Florida (Mr. NELSON), the Senator from Nebraska (Mr. NELSON) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of amendment No. 3749 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

At the request of Ms. MURKOWSKI, her name was added as a cosponsor of amendment No. 3749 proposed to S. 3217, supra.

AMENDMENT NO. 3752

At the request of Mrs. MURRAY, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of amendment No. 3752 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3754

At the request of Mrs. MURRAY, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from Wyoming (Mr. BARRASSO) were added as cosponsors of amendment No. 3754 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3759

At the request of Mrs. HUTCHISON, the names of the Senator from Washington (Mrs. MURRAY), the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Missouri (Mrs. MCCASKILL) were added as cosponsors of amendment No. 3759 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3778

At the request of Mr. UDALL of Colorado, the names of the Senator from Alaska (Mr. BEGICH), the Senator from Illinois (Mr. BURRIS) and the Senator from New York (Mrs. GILLIBRAND) were added as cosponsors of amendment No. 3778 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3791

At the request of Mr. BROWNBACK, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of amendment No. 3791 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3797

At the request of Mr. SCHUMER, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of amendment No. 3797 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. JOHNSON:

S. 3310. A bill to designate certain wilderness areas in the National Forest System in the State of South Dakota; to the Committee on Energy and Natural Resources.

Mr. JOHNSON. Mr. President, today, I am introducing legislation to protect the Cheyenne River Valley in the Buffalo Gap National Grassland. My bill will establish the first National Grassland wilderness area in the United States and provide the public with a unique experience to enjoy these public lands.

The Cheyenne River Valley in the Buffalo Gap National Grassland includes some of the finest prairie wilderness in the United States. Located among isolated buttes and the wide Cheyenne River Valley, these lands remain largely isolated and in the form that the Native people who first inhabited these lands would recognize.

The lands of the Cheyenne River Valley—Indian Creek, Red Shirt and Chalk Hills—exhibit the characteristics of undisturbed, wild lands. Consistent with their natural character, the U.S. Forest Service identified these lands for inclusion in the Wilderness Preservation System. In fact, since 2002, the Indian Creek and Red Shirt areas have been managed by the Forest Service to preserve their wilderness qualities, including a prohibition on motorized traffic that created one of the largest roadless areas in the Great Plains. My legislation builds off the Forest Service recommendation in a manner consistent with the history and purposes of the Buffalo Gap National Grassland.

These lands also support livestock grazing, a productive use and integral part of managing the health and sustainability of native grassland. My bill safeguards existing grazing, consistent with the Wilderness Act, by directing the Forest Service to allow for the continuation of grazing.

By designating a portion of the Cheyenne River Valley as wilderness, it is possible to protect its undeveloped character from encroaching motorized recreation while providing hunters, rock collectors, campers and hikers a new way to enjoy prairie grasslands.

The public benefits from enjoying a variety of experiences on our public lands. These lands provide food and fiber and are a natural asset to be responsibly and sustainably managed. America's grasslands, with millions of acres of rangeland, can also sustain other purposes, including the solitude and primitive character of wilderness. Establishing a first-of-its-kind grasslands wilderness fills a long overlooked gap and completes the unique history and varied landscapes of our National Grasslands.

I have named this bill in honor of my friend and a great advocate for South Dakotan's open spaces, the late Tony Dean. It is his words in describing the purposes of creating a grasslands wilderness bill that I turn to for the best explanation for why this bill is necessary. Tony said:

> Let's relate wilderness from the perspective of a hunter. It does not take a rocket scientist among hunters to recognize that once the opening salvo takes place on opening morning of the big game seasons, no matter where you live, the best hunting is almost always found far from the nearest road.

That sentiment is what, in part, this legislation is aimed at creating: a place held from competition of multiple uses and development, a place where the public and future generations can enjoy a unique wilderness experience found in few places outside my great State.

By Mr. KERRY:

S. 3311. A bill to improve and enhance the capabilities of the Department of Defense to prevent and respond to sexual assault in the Armed Forces, and for other purposes; to the Committee on Armed Services.

Mr. KERRY. Mr. President, I am deeply troubled by the increasing number of sexual assaults in the U.S. military. Not only is sexual assault a crime that is incompatible with military service, but it also undermines core values, degrades military readiness, subverts good will and forever changes the lives of victims and their families.

We know from the Defense Department's 2009 Report on Sexual Assault in the Military that the number of reported sexual assaults in the military

increased substantially last year—a trend that has continued for the last couple of years.

Unfortunately, according to the Pentagon, we also know that while improvements have been made, the number of sexual assaults in the military actually reported is far below the estimated number of assaults that have actually occurred in the military. It is estimated that only 10 to 20 percent of sexual assaults in the military are actually reported.

Obviously, more needs to be done. That is why I have introduced the Defense, Sexual Trauma Response and Good Governance, STRONG Act of 2010. This legislation builds on many of the common sense solutions that were included in the December 2009 Report on Sexual Assault in the Military, a report from the Defense Task Force on Sexual Assault in the Military Services.

The Defense STRONG Act of 2010 would guarantee legal counsel from a Judge Advocate General to all sexual assault victims, whether or not they file restricted or unrestricted reports. Currently, anyone who files a restricted report cannot seek legal counsel. Seeking legal counsel triggers an investigation, which, in turn, makes that report unrestricted—that is, it is no longer confidential and the chain of command is notified.

A directive issued by the Department of Defense in 2005 omitted Judge Advocate Generals and civilian lawyers trained in military law from the list of individuals that a victim can seek guidance and assistance from. The only individuals on the list are Sexual Assault Response Coordinator's, SARCs, Victim Advocates, VAs, health care personnel, and chaplains—none of whom are likely to have legal training. But it is my belief that the victim of a sexual assault should have the right to legal counsel no matter what.

In its report, the Defense Task Force on Sexual Assault in the Military Services also found that victims are not offered appropriate privileged communications. The report noted that there are 35 states that currently have a privilege for communications between Victim Advocates and victims of sexual assault. However, because no privilege exists in military proceedings, defense counsel are able to identify Victim Advocates as a potential defense witness in a court-martial. There have been multiple occasions in which information was obtained from Victim Advocates in court-martial proceedings and used to try to undermine the credibility of a victim with cross examinations highlighting inconsistencies in prior statements.

There are certain roles that I believe are inherently governmental and certainly one is the role of Sexual Assault Response Coordinator, which should be filled by either a uniformed servicemember or a DoD civilian employee, not a contractor. The Defense Task Force on Sexual Assault in the Military Services agreed. So this legislation would require one Sexual Assault Response Coordinator per brigade, filled by either a full-time military servicemember or a DoD civilian employee.

Moreover, this legislation also would require that Victim Advocates be either a uniformed servicemember or a DoD civilian employee. At the battalion level, there are usually two part time Victim Advocates. The Defense STRONG Act would require that there be at least one-full time Victim Advocate at each battalion, or battalion equivalent.

Another issue that has long plagued the DoD's ability to adequately respond to and prevent sexual assaults in the military is the lack of standardization amongst the services. The Defense STRONG Act would require the DoD to standardize much of their certification programs in a manner modeled after the Defense Equal Opportunity Management Institute, training Sexual Assault Response Coordinators as well as Victim Advocates. Standardization and professionalization would drastically impact readiness.

This legislation would also require the Department of Defense to develop modules specific to each level of Professional Military Education. By doing so, we could ensure that military leadership is aware of all available resources. This provision would also encourage the Department of Defense to craft each level of Professional Military Education to the level of responsibility as military leadership get promoted.

Elevating the Director of the Sexual Assault Prevention and Response Office to the Senior Executive Service level was another recommendation put forth by the Defense Task Force Report. A senior leader in this office is necessary in order to obtain resources and provide the attention this issue requires, much like the Defense Military Equal Opportunity Office and the Office of Military and Community Family Policy. Leadership at the senior level has already proven instrumental in helping advance the DoD's efforts in overcoming domestic violence and discrimination and could be just as helpful in combating sexual assaults.

While there is no magic formula for solving a problem that has long plagued the Department of Defense, I believe these provisions will strengthen the DoD's ability to respond to cases of sexual assault and prevent future cases from occurring.

By Mr. REID:

S. 3313. A bill to withdraw certain land located in Clark County, Nevada from location, entry, and patent under the mining laws and disposition under all laws pertaining to mineral and geothermal leasing or mineral materials, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to introduce the Sloan Hills Withdrawal Act of 2010.

Over the past year, I have been contacted by thousands of people in southern Nevada who have voiced serious concerns about a proposed aggregate mining operation that would be located on federal land very near Henderson, Nevada. I have a simple goal with the legislation that I am introducing today. My bill will stop the development of the proposed 640-acre gravel pit by withdrawing the area from location, entry, and patent under the mining laws and disposition under all laws pertaining to mineral materials. In short, this legislation makes sure that the proposed gravel operations at Sloan Hills will not go forward.

The Bureau of Land Management, BLM, is currently evaluating a proposal for a major gravel operation at the site in question. If approved, the resulting mine would blast rock, crush gravel, kick up dust, and consume precious water resources up to 24 hours a day, every day, for 30 years. This would all be done just a few miles from numerous Henderson neighborhoods.

Citizens from all over Clark County have rallied against this project because of its potential effect on the health of residents and the toll that the blasting other operations would have on an otherwise peaceful community. Because this project would be on Federal land local governments are limited in their ability to influence the outcome of the Sloan Hills proposal. It is clear to all of us, though, that the proposed location for this gravel quarry is not in the best interest of our community.

One of the major points of concern raised by Henderson residents is the large clouds of fine particulate matter that would be generated by mining activities at the Sloan Hills site. The dust kicked up by the proposed gravel operation would undoubtedly complicate the current air quality challenges in the Las Vegas Valley and would be particularly troublesome for members of nearby, age-restricted communities that have seniors already suffering from respiratory problems. Blasting and rock-crushing operations are also expected to generate noise and vibrations that will interfere with residents' daily lives.

This bill is important to me and to the people of southern Nevada. Keeping our communities safe and healthy is critical. I appreciate your help and I look forward to working with Chairman BINGAMAN, Ranking Member MURKOWSKI and the other distinguished members of the Senate Energy Committee to move this legislation forward in the near future.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

S. 3313

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Sloan Hills Withdrawal Act''.

SEC. 2. WITHDRAWAL OF SLOAN HILLS AREA OF CLARK COUNTY, NEVADA.

(a) DEFINITION OF FEDERAL LAND.—In this section, the term ''Federal land'' means the land identified as the ''Withdrawal Zone'' on the map entitled ''Sloan Hills Area'' and dated May 5, 2010.

(b) WITHDRAWAL.—Subject to valid rights in existence on the date of introduction of this Act, the Federal land is withdrawn from all forms of—

(1) location, entry, and patent under the mining laws; and

(2) disposition under all laws pertaining to mineral and geothermal leasing or mineral materials.

By Ms. COLLINS (for herself and Mr. FEINGOLD):

S. 3315. A bill to amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program; to the Committee on Finance.

Ms. COLLINS. Mr. President, I rise today to join with my colleague from Wisconsin in introducing legislation, the Home Health Care Access Protection Act of 2010, to prevent future unfair administrative cuts in Medicare home health payment rates.

Home health has become an increasingly important part of our health care system. The kinds of highly skilled and often technically complex services that our Nation's home health agencies provide have helped to keep families together and enabled millions of our most frail and vulnerable older and disabled persons to avoid hospitals and nursing homes and stay just where they want to be—in the comfort and security of their own homes. Moreover, by helping these individuals to avoid more costly institutional care, they are saving Medicare millions of dollars each year.

That is why I find it so ironic—and troubling—that the Medicare home health benefit continually comes under attack.

The health care reform bill that was recently signed into law by the President includes $40 billion in cuts to home care over the next ten years. Moreover, these cuts are a ''double-whammy'' because they come on top of $25 billion in additional cuts to home health over the next ten years imposed by the Centers for Medicare and Medicaid Services through regulation.

These cuts are particularly disproportionate for a program that costs Medicare less than $18 billion a year. This simply is not right, and it certainly is not in the best interest of our Nation's seniors who rely on home care to keep them out of hospitals, nursing homes, and other institutions.

The payment rate cuts implemented and proposed by CMS are based on the assertion that home health agencies have intentionally ''gamed the system'' by claiming that their patients have conditions of higher clinical severity than they actually have in order to receive higher Medicare payments. This unfounded allegation of ''case mix creep'' is based on what CMS contends to be an increase in the average clinical assessment ''score'' of home health patients over the last few years.

In fact, there are very real clinical and policy explanations for why the average clinical severity of home care patients' health conditions may have increased over the years. For example, the incentives built into the hospital diagnosis-related group—or DRG—reimbursement system have led to the faster discharge of sicker patients. Advances in technology and changes in medical practice have also enabled home health agencies to treat more complicated medical conditions that previously could only be treated in hospitals, nursing homes, or inpatient rehabilitation facilities.

Moreover, this unfair payment rate cut is being assessed across the board, even for home health agencies that showed a decrease in their clinical assessment scores. If an individual home health agency is truly gaming the system, CMS should target that one agency, not penalize everyone.

The research method, data and findings that CMS has used to justify the administrative cuts also raise serious concerns about the validity of the payment rate cuts. For example, while changes in the need for therapy services significantly affect the case mix ''score,'' the CMS research methodology disregards those changes in evaluating whether the patient population has changed. Moreover, the method by which CMS evaluates changes in case mix coding is not transparent, does not allow for true public participation, and is not performed in a manner that ensures accountability to Medicare patients and providers in terms of its validity and accuracy of outcomes.

The legislation we are introducing today will establish a reliable and transparent process for determining whether payment rate cuts are needed to account for improper changes in ''case mix scoring'' that are not related to changes in the nature of the patients served in home health care or the nature of the care they received. This process will still enable the Secretary of Health and Human Services to enact rate adjustments provided there is reliable evidence that higher case mix scores are resulting from factors other than changes in patient conditions. The legislation will also prevent the implementation of future Medicare payment rate cuts in home health until the Secretary is able to justify the payment cuts through the improved process set forth in the bill.

Home health care has consistently proven to be a compassionate and cost-effective alternative to institutional care. Additional deep cuts will be completely counterproductive to our efforts to control overall health care costs. The Home Health Care Access Protection Act of 2010 will help to ensure that our seniors and disabled Americans continue to have access to the quality home health services they deserve, and I encourage all of my colleagues to sign on as cosponsors.

By Ms. COLLINS (for herself and Ms. SNOWE):

S. 3316. A bill provide for flexibility and improvements in elementary and secondary education, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Ms. COLLINS. Mr. President, I rise today to introduce the No Child Left Behind Flexibility and Improvements Act. I am pleased to be joined in this effort by my colleague from Maine, Senator SNOWE. Our legislation would give greater local control and flexibility to Maine and other states in their efforts to implement the No Child Left Behind Act, NCLB, and provides common sense reforms in the statute.

Since NCLB was enacted in 2002, I have had the opportunity to meet with numerous Maine educators to discuss their concerns with the law. In response to their concerns, in March 2004, Senator SNOWE and I commissioned the Maine NCLB Task Force to examine the implementation issues facing Maine under both NCLB and the Maine Learning Results. Our task force included members from every county in the State and had superintendents, teachers, principals, school board members, parents, business leaders, former state legislators, special education experts, assessment specialists, officials from the Maine Department of Education, a former Maine Commissioner of Education, and the Dean from the University of Maine's College of Education and Human Development.

After a year of study, the Task Force presented us with its final report outlining recommendations for possible statutory and regulatory changes to the act. These recommendations form the basis of the legislation that we are introducing today.

First, our legislation would provide greater flexibility to states in the ways that they demonstrate student progress in meeting state education standards. Specifically, it would permit states to use a cohort growth model, which tracks the progress of the same group of students over time. It would also permit the use of an ''indexing'' model, where progress is measured based on the number of students whose scores improve form, for example, a ''below-basic'' to a ''basic'' level, and not simply on the number of students who cross the ''proficient'' line.

Second, our legislation would provide schools with better notice regarding possible performance issues, allowing schools a chance to identify and work with a particular group of students before being identified. It would expand the existing ''safe-harbor'' provisions to allow more schools to qualify for this important protection. The changes made in our bill are in keeping with what assessment experts and teachers know—that significant gains in academic achievement tend to occur gradually and over time.

Third, our legislation would allow the members of a special education student's IEP team to determine the best assessment for that individual student, and would permit the student's performance on that assessment to count for all NCLB purposes.

One reason this change is so important for Maine is that we have small student populations and Maine has chosen a very small subgroup size—only 20 students. I was concerned to hear reports that in some schools, special education students fear that they are being blamed for their school not making adequate yearly progress. While the statute explicitly prohibits the disaggregation of student data if it would jeopardize student privacy, I am concerned to hear that this is not working out in practice.

This legislative change is also based on principles of fairness and common sense. Many times, it simply does not make sense to require a special needs student to take a grade-level assessment that everyone knows he or she is not ready to take. Many special education students are referred for special education services precisely because they cannot meet grade-level expectations. Allowing the IEP team to determine the best test for each special student will bring an important improvement to the Act while still ensuring accountability.

Fourth, the legislation addresses my concern about the statute's current requirement that all schools reach 100 percent proficiency by 2013–2014. Our bill would require the Secretary of Education to review progress by the states toward meeting this goal every three years, and would allow him to modify the time-line as necessary.

Fifth, our legislation would provide new flexibility for teachers of multiple subjects at the secondary school level to help them meet the ''highly qualified teacher'' requirements. Unfortunately, the current regulations place undue burdens on teachers at small and rural schools who often teach multiple subjects due to staffing needs, and on special education teachers who work with students on a variety of subjects throughout the day. Under the bill, provided these teachers are highly qualified for one subject they teach, they will be provided additional time and less burdensome avenues to satisfy the remaining requirements.

Our legislation is a comprehensive effort to provide greater flexibility and common sense modifications to address the key NCLB challenges facing Maine. Our goals remain the same as those in NCLB: a good education for each and every child; well-qualified, committed teachers in every classroom; and increased transparency and accountability for every school. I look forward to working with my colleagues on these issues during the upcoming NCLB reauthorization process.

By Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. DURBIN, Mr. GREGG, Mr. LIEBERMAN, and Mr. DODD):

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

Mr. MCCONNELL. Mr. President, today I rise to introduce a joint resolution that would renew sanctions against the Burmese junta. As in years past, I am joined in this effort by my good friend Senator FEINSTEIN. Senators MCCAIN, DURBIN, GREGG, and LIEBERMAN are original cosponsors of this bipartisan legislation and continue to be leaders on the issue.

Renewing sanctions against the military regime in Burma is as timely and as important as ever. Over the past year, the regime has not only made clear that it has no intention of reforming, it is also trying to stand up a new sham constitution and to legitimize itself in the eyes of the world through a sham election. In my view, the United States must deny the regime that legitimacy.

By way of background, a little history is in order. For nearly half a century, Burma has been under some kind of military rule, and every popular effort to reverse that situation has failed. In 1988, military authorities violently put down a popular uprising. Two years later, the Burmese people went to the polls and handed an overwhelming victory to the prodemocracy opposition, and the junta ignored the results. It never seated these popularly elected candidates. It jailed prodemocracy leaders, such as Aung San Suu Kyi, and it has maintained its brutal rule ever since.

In response to these events, the United States established on a bipartisan basis various sanctions against the Burmese regime. These include a 1997 Executive order; the annual import ban, which has been renewed annually since 2003; and restrictions on Burmese jade, which were enacted in 2008.

On a number of occasions since 1990, the United States and the U.N. have attempted to engage Burma diplomatically. These include, during the Clinton administration, a delegation led by Deputy Assistant Secretary of State Thomas Hubbard; various efforts by former U.S. Ambassador to the U.N. Madeleine Albright; and two trips to Burma by then-Congressman Bill Richardson in the mid-1990s.

Other diplomatic efforts included Assistant Secretary of State Christopher Hill's ''roadmap'' in 2006, and overtures made by the United States through China in 2007. In 2008, ADM Timothy Keating met with Burmese officials as part of United States efforts to provide humanitarian assistance in the wake of Cyclone Nargis.

The U.N., for its part, has dispatched a human rights envoy to Burma 15 times and special envoys 26 times over the past two decades. U.N. Secretary General Ban Ki-Moon has visited Burma on two occasions.

None of these efforts has yielded anything in the way of reform. Indeed, when Burmese citizens, led by Buddhist monks, took to the streets in peaceful protest against the government and its policies in the fall of 2007, these prodemocracy protesters, much like their predecessors, were brutally suppressed.

Nonetheless, the regime has sought at various times to save face internationally. In response to this last major challenge to its authority in the fall of 2007, for example, the regime unveiled a proposed constitution. But a quick look at the document shows that it could scarcely have been less democratic. It precluded Suu Kyi from participating in the electoral process and ensured that the charter may not be amended without the military's blessing. The noted constitutional law professor, David Williams, of Indiana University, told the Senate Foreign Relations Committee last year it was ''one of the worst constitutions [he had] ever seen.''

What is more, the vote to adopt this constitution took place 2 years ago in the immediate aftermath of Cyclone Nargis, the worst natural disaster in modern Burmese history, and international election observers were not permitted access to the country during the vote. If the regime was interested in legitimacy, holding a vote such as this in the middle of a natural disaster without election observers is not exactly the way to do it.

The results of this vote were roundly condemned, and for good reason. Still, despite widespread condemnation of this constitution and the circumstances surrounding its adoption, some held out hope that a subsequent election law might lead to democratic reform. But those hopes were dashed earlier this year when the regime actually issued the long-awaited election law. Among other things, the law would force the democratic opposition, the National League for Democracy, to expel Suu Kyi if the party chose to enter any of its candidates in the upcoming national election and it forbids political prisoners and Buddhist monks from political participation.

The deadline for registering candidates and political parties under the new law is later this week, and parties that fail to register before then will be deemed illegal. In other words, the law's practical effect would be to sideline Burma's most prominent democratic reformer and force its leading opposition party out of business.

We also get periodic press reports of ties between Burma and North Korea, including a particularly alarming report in recent days about an alleged weapons transfer from Pyongyang.

Last year, the Obama administration initiated a review of United States policy with respect to Burma. As a result of that review, the administration decided it is time for the United States to take another run at engaging the regime. That is why last summer Secretary Clinton reportedly proposed to

her Burmese counterpart at an international conference in Southeast Asia that the United States remove its investment ban on Burma in exchange for the unconditional release of Suu Kyi. Whatever the merits of this overture, this was a serious offer from a high ranking U.S. official aimed at improving bilateral relations.

Yet not only was Secretary Clinton's offer ignored and Suu Kyi not freed, the regime actually extended Suu Kyi's detention for another year and a half, and several months later, the junta denied her appeal. It was shortly after that that the regime released the anti-democratic election law I just referred to. So however well intentioned, the administration's policy of engagement has, unfortunately, met with the same fate as earlier engagement efforts, notwithstanding the fig leaves the regime occasionally holds out as supposed proof of its willingness to reform.

Clearly, the regime craves legitimization of its rule. Why else would it suddenly move to finalize the constitution it had been working on intermittently for 14 years after its rule was challenged by the nonviolent Saffron Revolution in the fall of 2007? They did it for the same reason they trotted out a transparently flawed election law earlier this year: They wanted to provide the appearance of reform where there was none. But they cannot have it both ways. If the regime wants legitimization, it must show real progress.

Secretary Clinton's policy review toward Burma concluded that engagement along with sanctions might produce results where sanctions alone had failed. Although we have yet to see any positive results from engagement, the administration itself concedes that sanctions should remain in place. But the administration, to its credit, has been quite candid about the lack of tangible progress by the regime.

Assistant Secretary of State Kurt Campbell acknowledged as much after the release of the Burmese election law. He said:

[T]he U.S. approach was to try to encourage domestic dialogue between the key stakeholders . . . and the recent promulgation of the election criteria doesn't leave much room for such a dialog.

It should be noted parenthetically the absence of any tangible result from engagement has nothing to do with the work of American diplomats. It has everything to do with the type of regime we are dealing with in Burma. But, again, the fact remains that no progress—none—has been made.

Legitimacy is the one thing the regime cannot impose by force. But if legitimacy is what it wants, a first step would be credible elections. At this point there is no reason to believe that is even possible under the current constitution, under the current election law, and in the current political climate in Burma.

Renewing sanctions is important because it denies the junta the legitimacy it so craves. A sanctions regime says to the junta and the world, in no uncertain terms, the United States does not view this government as having the support of its citizens. It says the United States will not be a party to recognizing the junta's attempts to overturn the democratic elections of 1990, the last true expression of the Burmese voters.

Sanctions should remain in place against the junta for the same reason the term ''Burma'' is used by friends of democracy instead of the junta's chosen name of ''Myanmar''—because Myanmar is the name of a government that has not been chosen by its people.

In short, sanctions should remain in place because lifting sanctions would give the regime precisely what it wants; namely, legitimacy.

I strongly urge my colleagues to support sanctions renewal against the Burmese regime.

Mr. DODD. Mr. President, let me commend the minority leader for his comments on Burma. It was a good education for me here to listen to it. I ask unanimous consent that I be added as a cosponsor to the legislation.

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

Mr. MCCONNELL. I thank my friend from Connecticut.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the text of the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 29

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress approves the renewal of the import restrictions contained in section 3(a)(1) and section 3A(b)(1) and (c)(1) of the Burmese Freedom and Democracy Act of 2003.

Mrs. FEINSTEIN. Mr. President, I rise today once again with Senator MCCONNELL to introduce a joint resolution renewing the ban on all imports from Burma for another year.

We are proud to be joined by Senators MCCAIN, DURBIN, GREGG, and LIEBERMAN and we look forward to swift action by the Senate, House, and the President on this important matter.

Now, more than ever, the people of Burma need to know that we stand by them and support their vision of a free and democratic Burma.

On May 6th, the National League for Democracy, NLD, led by Nobel Peace Prize Laureate and political prisoner Aung San Suu Kyi, will cease to exist.

Let me be clear: the NLD is not shutting down out of its own free will.

It is being forced to disband by an unjust and undemocratic constitution and election law, both drafted in secret and behind closed doors by the ruling military junta, the State Peace and Development Council, SPDC, to solidify its grip on power.

Let me explain.

Under the terms of the new constitution, 25 percent of the seats must be set aside for the military.

Think about that: before any vote has been cast, the military is guaranteed a quarter of the seats in the new 440 member House of Representatives.

How will this new institution be any different from the current military regime?

If that is not enough to raise doubts about the military's commitment to a truly representative government, it should also be pointed out that last week the regime's Prime Minister, Thein Sein, and 22 cabinet ministers resigned from the army to form a new ''civilian'' political party, the Union Solidarity and Development Party.

Any seats won by this new ''party'' in the upcoming elections will be in addition to the 25 percent set aside for active military members.

Does anyone really believe the regime has embraced democracy and the concept of civilian rule? Unfortunately, it will be business as usual for the people of Burma and the democratic opposition.

What about Suu Kyi and her National League of Democracy, winners of the last free parliamentary elections in 1990?

First, last month, the regime, which never allowed the NLD to assume power, officially annulled its 1990 victory.

Second, under the new constitution, as a convicted ''criminal'' Suu Kyi is barred from running in the elections.

Finally, under the terms of the election law, in order to participate in the upcoming parliamentary elections and remain legally active, a political party has to cut ties with any members who are convicted criminals.

Thus, the NLD had to either kick Suu Kyi out of the party and participate in the elections or face extinction.

It should come as no surprise that the NLD refused to turn its back on Suu Kyi and give its stamp of approval to the regime's sham constitution and electoral law.

I applaud their courage and their devotion to democracy, human rights, and the rule of law.

While I am saddened to see the regime close its doors, the spirit and the principles of the NLD will live on in the hearts and minds of the people.

I know they will one day be able to elect a truly representative government.

As Tin Oo, the NLD's deputy leader and former political prisoner said: ''We do not feel sad. We have honor. One day we will come back; we will be reincarnated by the will of the people.''

This is a clear message to the regime that an illegitimate constitution and election law cannot suppress the unyielding democratic aspirations of the people of Burma.

Now, we must send our own signal to the regime that its quest for legitimacy has failed.

We must send our own signal to the democratic opposition that we stand in solidarity with them and we will not abandon them.

Now is the time to renew the import ban on all products from Burma for another year.

Let me be clear—I am disappointed that the ban has not moved Burma any closer to national reconciliation and a democratic government.

Indeed, as I have noted, the regime has taken several steps in the wrong direction.

But we have the opportunity to review these sanctions every year.

Last year we passed legislation allowing the sanctions to be renewed, once a year, for up to three more years until 2012.

Simply put, if we fail to renew the import ban, we will reward the military regime for its decades' long record of oppression.

We will reward them for keeping the true leader of Burma, Suu Kyi, behind bars and under house arrest for the better part of 20 years.

We will reward them for forcing the National League for Democracy to close its doors.

We will reward them for 2,100 political prisoners, the use of child soldiers, the persecution of ethnic minorities, the use of rape as an instrument of war, the use of torture, the use of forced labor, and the displacement of civilians.

Indeed, the standards for lifting the sanctions are clear. The regime must make ''substantial and measureable progress'' towards ending violations of internationally recognized human rights; releasing all political prisoners; allowing freedom of speech and press; allowing freedom of association; permitting the peaceful exercise of religion; and bringing to a conclusion an agreement between the SPDC and the National League for Democracy and Burma's ethnic nationalities on the restoration of a democratic government.

By every measure, the regime has failed to even come close to meeting these conditions. So we must act to renew the import ban.

But we cannot act alone.

I urge the United Nations and the international community to follow our lead and put pressure on the regime to abandon this process, release political prisoners, and draft a truly democratic and representative constitution.

I urge my colleagues to support this joint resolution.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 514—CONGRATULATING THE STUDENTS, PARENTS, TEACHERS, AND ADMINISTRATORS OF CHARTER SCHOOLS ACROSS THE UNITED STATES FOR ONGOING CONTRIBUTIONS TO EDUCATION AND SUPPORTING THE IDEALS AND GOALS OF THE 11TH ANNUAL NATIONAL CHARTER SCHOOLS WEEK, TO BE HELD MAY 2 THROUGH MAY 8, 2010

Ms. LANDRIEU (for herself, Mr. ALEXANDER, Mr. BAYH, Mr. BURR, Mr. CARPER, Mr. DURBIN, Mrs. FEINSTEIN, Mr. GREGG, Mr. LIEBERMAN, and Mr. VITTER) submitted the following resolution; which was considered and agreed to:

S. RES. 514

Whereas charter schools deliver high-quality public education and challenge all students to reach their potential;

Whereas charter schools promote innovation and excellence in public education;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that respond to the needs of communities, families, and students in the United States, and promote the principles of quality, accountability, choice, and innovation;

Whereas, in exchange for flexibility and autonomy, charter schools are held accountable by their sponsors for improving student achievement and for the financial and other operations of the charter schools;

Whereas 40 States, the District of Columbia, and Guam have passed laws authorizing charter schools;

Whereas 4,956 charter schools are operating nationwide, serving more than 1,600,000 students;

Whereas, in fiscal year 2010 and the 16 previous fiscal years, Congress has provided a total of more than $2,734,370,000 in financial assistance to the charter school movement through grants for planning, startup, implementation, dissemination, and facilities;

Whereas numerous charter schools improve the achievements of students and stimulate improvement in traditional public schools;

Whereas charter schools are required to meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in the same manner as traditional public schools;

Whereas charter schools often set higher and additional individual goals than the requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to ensure that charter schools are of high quality and truly accountable to the public;

Whereas charter schools give parents the freedom to choose public schools, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and the communities served by the charter schools;

Whereas more than 50 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill more than 1,100 average-sized charter schools;

Whereas the President has called for doubling the Federal support for charter schools, including replicating and expanding the highest performing charter models to meet the dramatic demand created by the more than 365,000 children on charter school waiting lists; and

Whereas the 11th annual National Charter Schools Week is to be held May 2, through May 8, 2010: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the students, parents, teachers, and administrators of charter schools across the United States for ongoing contributions to education, the impressive strides made in closing the persistent academic achievement gap in the United States, and improving and strengthening the public school system in the United States;

(2) supports the ideals and goals of the 11th annual National Charter Schools Week, a week-long celebration to be held May 2 through May 8, 2010, in communities throughout the United States; and

(3) encourages the people of the United States to hold appropriate programs, ceremonies, and activities during National Charter Schools Week to demonstrate support for charter schools.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3815. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3816. Mr. CHAMBLISS (for himself, Mr. SHELBY, Mr. MCCONNELL, Mr. GREGG, Mr. CRAPO, Mr. JOHANNS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. CORNYN, Mr. ROBERTS, Mr. BENNETT, Mr. VITTER, and Mr. THUNE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3817. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3818. Mr. MENENDEZ (for himself and Mr. MERKLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3819. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3820. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3821. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3822. Mr. REID (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself

and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3823. Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3824. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3825. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3826. Mr. SHELBY (for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, Mr. ENZI, and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3827. Mr. SHELBY (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra.

SA 3828. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3829. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3830. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. REID (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3831. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3832. Mr. SESSIONS (for himself, Mr. BUNNING, Mr. DEMINT, Mr. ENSIGN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3833. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3834. Mr. CORKER (for himself, Mr. GREGG, Mr. ISAKSON, and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3835. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3836. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3837. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3838. Mr. BROWN of Massachusetts (for himself, Mrs. SHAHEEN, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3839. Mr. MCCAIN (for himself, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, and Ms. COLLINS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3840. Mr. CARDIN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3841. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3842. Mr. NELSON, of Florida (for himself and Mr. BROWN, of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3843. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3844. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3845. Mr. KAUFMAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3846. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3847. Mr. DODD (for Mr. LEAHY (for himself and Mr. CORNYN)) proposed an amendment to the bill S. 3111, to establish the Commission on Freedom of Information Act Processing Delays.

SA 3848. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3849. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3850. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3851. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3852. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3853. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3854. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3855. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3856. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3857. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3858. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3859. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3815. Mr. DORGAN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1533, line 5, strike ''Section'' and insert the following:

''(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Board of Governors shall disclose to Congress and to the public, with respect to any

emergency financial assistance provided during the 5-year period preceding the date of enactment of this Act under the authority of the Board of Governors in the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343)—

''(1) the name of each financial company that received such assistance;

''(2) the value or amount and description of the emergency assistance provided, including loans to investment banks from the Federal Reserve discount lending program or special purpose entities;

''(3) the date on which the financial assistance was provided;

''(4) the terms and conditions for the emergency assistance; and

''(5) a full description of any collateral required by the Board of Governors and secured from the recipients of such emergency assistance.

''(b) PUBLIC DISCLOSURE.—Section''.

SA 3816. Mr. CHAMBLISS (for himself, Mr. SHELBY, Mr. MCCONNELL, Mr. GREGG, Mr. CRAPO, Mr. JOHANNS, Mr. COCHRAN, Mrs. HUTCHISON, Mr. CORNYN, Mr. ROBERTS, Mr. BENNETT, Mr. VITTER, and Mr. THUNE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title VII and insert the following:

TITLE VII—OVER-THE-COUNTER DERIVATIVES MARKET

SEC. 701. SHORT TITLE; PURPOSES.

(a) SHORT TITLE.—This title may be cited as the ''Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010''.

(b) PURPOSES.—The purposes of this title are—

(1) to improve regulators' access to information by establishing well-regulated repositories for the reporting of all swaps;

(2) to repeal the statutory provisions that prohibit regulators from overseeing the over-the-counter swaps markets;

(3) to increase the number of derivatives transactions that are centrally cleared;

(4) to ensure that corporate end users can continue to hedge their unique business risks through customized derivatives;

(5) to prevent concentration of inadequately hedged risks in individual firms or central clearinghouses; and

(6) to provide investors and other swap market participants with information about transactions and positions in order to help them mark existing swap positions to market, make informed decisions before executing future transactions, and assess the quality of transactions they have executed.

Subtitle A—Regulatory Authority

SEC. 711. DEFINITIONS.

In this subtitle, the terms ''prudential regulator'', ''swap'', ''swap participant'', ''swap data repository'', ''associated person of a swap participant'', ''eligible contract participant'', ''non-security-based swap execution facility'', ''broad-based security index'', ''non-security-based swap'', ''non-security-based swap data repository'', ''security-based swap'', and ''security-based swap data repository'' have the meanings given the terms in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

SEC. 712. REVIEW OF REGULATORY AUTHORITY.

(a) CONSULTATION.—

(1) RULES; ORDERS.—In developing and promulgating rules or orders pursuant to this subsection—

(A) the Commodity Futures Trading Commission shall consider the views of—

(i) the Securities and Exchange Commission; and

(ii) the prudential regulators; and

(B) the Securities and Exchange Commission shall consider the views of—

(i) the Commodity Futures Trading Commission; and

(ii) the prudential regulators.

(2) TREATMENT OF SIMILAR PRODUCTS AND ENTITIES.—

(A) IN GENERAL.—In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) EFFECT.—Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(b) GLOBAL RULEMAKING TIMEFRAME.—Unless otherwise provided in a particular provision of this title, or an amendment made by this title, the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall promulgate rules and regulations required of each Commission under this title or an amendment made by this title not later than 1 year after the date of enactment of this Act.

(c) REGULATORY AUTHORITY.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall prescribe such regulations as may be necessary to carry out the provisions of this title.

SEC. 713. DETERMINATION OF STATUS OF NEW PRODUCTS.

(a) IN GENERAL.—If the Securities and Exchange Commission and the Commodity Futures Trading Commission are unable to determine whether any new product is a security, future, option on a future, security-based swap, or non-security-based swap, either agency may petition the Financial Stability Oversight Council (referred to in this Act as the ''Council'') for a binding determination of the status of the new product as a security, future, option on a future, security-based swap, or non-security-based swap.

(b) DEADLINE FOR DETERMINATION.—The Council shall issue its determination within 60 days after the date of receipt of a petition described in subsection (a).

SEC. 714. STUDY ON ENFORCEMENT CONSISTENCY.

(a) STUDY.—The Council shall conduct a study to compare the nature and amount of penalties and other sanctions imposed for violations of this title and any regulations adopted thereunder.

(b) REPORT.—Not later than 4 years after the enactment of this Act, the Council shall submit a report to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives that sets forth—

(1) the findings of the study required under subsection (a); and

(2) recommendations for statutory changes to enhance the consistency with which this Act and the regulations adopted thereunder are enforced.

SEC. 715. JURISDICTION.

(a) The provisions of this title shall not apply to activities outside the United States, unless those activities—

(1) have a direct and significant connection with activities in, or an effect on, United States commerce; or

(2) contravene such rules or regulations as the Securities and Exchange Commission and Commodity Futures Trading Commission may jointly, by rule or regulation, prescribe as necessary or appropriate to prevent the evasion of any provision of this Act.

(b) The Commodity Futures Trading Commission and the Securities and Exchange Commission may exempt a person from some or all requirements of this title, if they jointly determine by rule or order that the person is subject to comparable requirements as part of comprehensive supervision and regulation on a consolidated basis by an appropriate regulatory authority in a foreign jurisdiction and such regulatory authority has entered into an information sharing agreement with the Commodity Futures Trading Commission and the Securities and Exchange Commission.

SEC. 716. INTERNATIONAL HARMONIZATION.

(a) INTERNATIONAL STANDARDS.—The Department of the Treasury shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of swaps, swap market participants, swap data repositories, and central clearing entities.

(b) INTERNATIONAL INFORMATION-SHARING AGREEMENTS.—Nothing in subsection (a) shall be construed to prohibit the Commodity Futures Trading Commission and the Securities and Exchange Commission, from entering into information-sharing arrangements with foreign regulators as may be deemed to be necessary in furtherance of the purposes of this title.

SEC. 717. CONFIDENTIALITY OF INFORMATION.

(a) CONFIDENTIALITY OF INFORMATION PROVIDED TO MEMBERS OF CONGRESS.—The Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives shall each establish, by rule or resolution of such House, procedures to protect from unauthorized disclosure all confidential information (including information covered by sections 1905 and 1906 of title 18, United States Code,) that is furnished to the committees and Members of Congress under this title. Such procedures shall be established in consultation with the appropriate regulatory agencies.

(b) CONFIDENTIALITY OF INFORMATION PROVIDED TO REGULATORS.—No non-public information provided to or obtained by the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice under this title may be disclosed to any other person. Nothing in this section shall authorize the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice to withhold information from Congress, or prevent the Commodity Futures Trading Commission, the Securities and Exchange Commission, any prudential regulator, the Financial Stability Oversight Council, or the Department of Justice from complying with a request for information from any other Federal department or agency.

SEC. 718. COMMON FRAMEWORK FOR CLEARINGHOUSE RISK MANAGEMENT.

(a) COMMON FRAMEWORK FOR RISK MANAGEMENT.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall consult with the Federal Reserve Board of Governors to jointly develop risk management supervision programs for derivatives clearing organizations and clearing agencies (''clearinghouses''). Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives recommendations for—

(1) improving consistency in the clearinghouse oversight programs of the Securities and Exchange Commission and the Commodity Futures Trading Commission;

(2) promoting robust risk management by clearinghouses;

(3) promoting robust risk management oversight by regulators of clearinghouses; and

(4) improving regulators' ability to monitor the potential effects of clearinghouse risk management on the stability of the financial system of the United States.

(b) DUALLY REGISTERED PERSONS.—

(1) IN GENERAL.—The Commodity Futures Trading Commission and the Securities and Exchange Commission shall develop and, subject to approval by the Council, implement an oversight plan with respect to each person that is subject to registration as—

(A) both a derivatives clearing organization and a clearing agency; or

(B) both a non-security-based swap data repository and security-based swap data repository.

(2) CONTENTS OF PLANS.—Each plan shall identify recordkeeping, reporting and other requirements imposed on the person by the Commodity Futures Trading Commission and the Securities and Exchange Commission that are inconsistent, an approach for eliminating inconsistencies where appropriate, and ways in which the two commissions can coordinate their inspection and examination of the person. Such plan, if appropriate, may designate one regulator as the person's primary regulator.

(3) SUBMISSION OF PLANS.—The Commissions shall submit each plan, including any recommended legislative changes to facilitate the plan, to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives on or before 1 year after the date on which the person becomes dually registered.

SEC. 719. RECOMMENDATIONS FOR CHANGES TO PORTFOLIO MARGINING LAWS.

Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the prudential regulators shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives recommendations for legislative changes to the Federal laws to facilitate—

(1) the portfolio margining of securities and commodity futures and options, commodity options, swaps, and other financial instrument positions;

(2) the portability of customer swap positions and associated margin upon the insolvency of a clearing participant; and

(3) harmonization of the insolvency laws to provide for uniform treatment across similar entities, regardless of whether they are registered with or regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

SEC. 720. ABUSIVE SWAPS.

The Council may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of swaps; and

(2) issue a report with respect to any types of swaps that the Council determines to be detrimental to the financial system stability of the United States.

Subtitle B—Regulation Non-Security-Based of Swap Markets

SEC. 721. DEFINITIONS.

(a) IN GENERAL.—Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (2), (3) through (17), (18) through (23), (24) through (28), (29), (30), (31) through (33), and (34) as paragraphs (5), (8) through (22), (26) through (31), (34) through (38), (40), (41), (43) through (45), and (49), respectively;

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

''(2) APPROPRIATE FEDERAL BANKING AGENCY.—The term 'appropriate Federal banking agency' has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(3) ASSOCIATED PERSON OF A SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'associated person of a swap participant' means—

''(i) any partner, officer, director, or branch manager of a swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap participant; and

''(iii) any employee of a swap participant.

''(B) EXCLUSION.—Other than for purposes of section 4s(b)(6), the term 'associated person of a swap participant' does not include any person associated with a swap participant the functions of which are solely clerical or ministerial.

''(4) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.'';

(3) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

''(6) BROAD-BASED SECURITY INDEX.—The term 'broad-based security index' means an index that—

''(A) is not a narrow-based security index, as defined in this section; or

''(B) the Commission and the Securities and Exchange Commission have jointly determined should not be treated as a narrow-based security index.

''(7) CLEARED SWAP.—The term 'cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission or a clearing agency regulated with the Securities and Exchange Commission.'';

(4) in paragraph (10) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap'' after ''facility,'';

(5) in paragraph (11)(A)(i)(I) (as redesignated by paragraph (1)), by striking ''made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility'' and inserting '', security futures product, or non-security-based swap'';

(6) in paragraph (16) (as redesignated by paragraph (1)) in subparagraph (A), in the matter preceding clause (i), by striking ''paragraph (12)(A)'' and inserting ''paragraph (17)(A)'';

(7) in paragraph (17) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) in the matter following clause (vii)(III)—

(I) by striking ''section 1a (11)(A)'' and inserting ''paragraph (16)(A)''; and

(II) by striking ''$25,000,000'' and inserting ''$50,000,000''; and

(ii) in clause (xi), in the matter preceding subclause (I), by striking ''total assets in an amount'' and inserting ''amounts invested on a discretionary basis, the aggregate of which is'';

(8) in paragraph (21) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap'' after ''of any contract market or derivatives transaction execution facility'';

(9) in paragraph (22) (as redesignated by paragraph (1)), by inserting '', security futures product, or non-security-based swap'' after ''of any contract market or derivatives transaction execution facility'';

(10) by inserting after paragraph (22) (as redesignated by paragraph (1)) the following:

''(23) FOREIGN EXCHANGE FORWARD.—The term 'foreign exchange forward' means a transaction that—

''(A) occurs at a later time on the trade date or on a specific future date; and

''(B) solely involves—

''(i) the exchange of 2 different currencies at a fixed rate agreed to at the inception of the contract; or

''(ii) 1 or more payments determined by reference to the rate of exchange of 2 different currencies, or the movement thereof in accordance with a method agreed to at the inception of a contract.

''(24) FOREIGN EXCHANGE SWAP.—The term 'foreign exchange swap' means a transaction that does not involve any payment or delivery based on the level of interest rates, the price of any commodity other than a currency, or the price of, or default under, any debt or equity security or loan and solely involves—

''(A) the exchange of 2 different currencies at a fixed rate agreed to at the inception of the contract that occurs at a later time on the trade date or on a specific future date and a reverse exchange of the same currencies at a date further in the future; or

''(B) 1 or more payments determined by reference to the rate of exchange of 2 different currencies, or the movement thereof in accordance with a method agreed to at the inception of the contract, at a later time on the trade date or on a specific future date and a payment at a date further in the future that is determined by reference to the rate of exchange of the same currencies or the movement thereof in accordance with a method agreed to at the inception of the contract.

''(25) FOREIGN EXCHANGE OPTION.—The term 'foreign exchange option' means a transaction, including a put or a call, that solely entitles the buyer, upon exercise, on a specified date or upon a specified event—

''(A) to purchase from the seller a specified quantity or 1 or more currencies and to sell to the seller a specified quantity of 1 or more currencies; or

''(B) to require the seller to make a payment determined by reference to the exchange rate of such currencies or the movement thereof in accordance with a method agreed to at the inception of the contract.'';

(11) in paragraph (28) (as redesignated by paragraph (1))—

(A) in subparagraph (A)—

(i) by inserting '', security futures product, or non-security-based swap'' after ''facility''; and

(ii) by striking ''; and'' and inserting a semicolon;

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) EXCLUSION.—The term 'futures commission merchant' does not include a person who acts only as a counterparty for non-security-based swaps with eligible contract participants and who does not otherwise engage in the activities of a futures commission merchant.'';

(12) in paragraph (30) (as redesignated by paragraph (1)), in subparagraph (B), by striking ''state'' and inserting ''State'';

(13) in paragraph (31) (as redesignated by paragraph (1)), by inserting ''security futures product, or non-security-based swap,'' after ''facility'';

(14) by inserting after paragraph (31) (as redesignated by paragraph (1)) the following:

''(32) SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'swap participant' means any person who—

''(i) is engaged in the business of purchasing or selling swaps for such person's own account or for others;

''(ii) is making a market in swaps; or

''(iii) engages in transactions in swaps and is not a swap end user.

''(B) EXCEPTIONS.—A person shall not be deemed to be a swap participant pursuant to subparagraph (A)—

''(i) solely because that person buys or sells swaps for such person's own account or the account of any person under common control with such person, either individually or in a fiduciary capacity, but not as a part of a regular business; or

''(ii) if that person engages in a de minimis quantity of activities described in subparagraph (A) in connection with transactions with or on behalf of customers.

''(33) SWAP END USER.—

''(A) IN GENERAL.—The term 'swap end user' means any person the gross aggregate notional value of whose outstanding swaps that do not qualify as bona fide hedging swap transactions—

''(i) is 5 percent or less of the gross aggregate notional value of the person's outstanding swaps; or

''(ii) is 7 percent or less of the gross aggregate notional value of the person's outstanding swaps and security-based swaps, provided that the aggregate notional value of the person's outstanding swaps and security-based swaps that do not qualify as bona fide hedging transactions and were executed in connection with the person's commercial transactions is 2 percent or more of the gross aggregate notional value of the person's outstanding swaps.

''(B) ENUMERATED SWAP END USERS.—The term 'swap end user' shall include—

''(i) an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); and

''(ii) an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(3)) that is subject to title I of that Act (29 U.S.C. 1001 et seq.).

''(C) ENUMERATED EXCEPTIONS.—The term 'swap end user' shall not include—

''(i) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20)); or

''(ii) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act o f 1940 (15 U.S.C. 80a–3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)), and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets.

''(D) AVAILABILITY OF INFORMATION.—Upon written request from the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council, a swap end user must provide information regarding the swaps that it holds. This information may not be disclosed to any other person. Nothing in this subsection shall authorize the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council to withhold information from Congress, or prevent the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council from complying with a request for information from any other Federal department or agency or foreign government with which the Commission, the Securities and Exchange Commission, or the Financial Stability Oversight Council has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(33A) BONA FIDE HEDGING SWAP TRANSACTION.—

''(A) IN GENERAL.—The term 'bona fide hedging swap transaction' means a purchase or sale by any person of a bona fide hedge swap that is economically appropriate to the reduction or offsetting of risks arising from—

''(i) the potential change in the value of assets which such person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising;

''(ii) the potential change in the cost or value of liabilities which such person owns or anticipates incurring; or

''(iii) the potential change in the cost or value of goods or services which such person provides, purchases, or anticipates providing or purchasing.

''(B) PREVENTION OF EVASION.—A swap transaction that is undertaken solely for the purpose of avoiding registration as a swap participant shall not constitute a bona fide hedging swap transaction.'';

(15) by inserting after paragraph (38) (as redesignated by paragraph (1)) the following:

''(39) PRUDENTIAL REGULATOR.—The term 'prudential regulator' means—

''(A) the Office of the Comptroller of the Currency, in the case of—

''(i) any national banking association;

''(ii) any Federal branch or agency of a foreign bank; or

''(iii) any Federal savings association;

''(B) the Federal Deposit Insurance Corporation, in the case of—

''(i) any insured State bank;

''(ii) any foreign bank having an insured branch; or

''(iii) any State savings association;

''(C) the Board of Governors of the Federal Reserve System, in the case of—

''(i) any noninsured State member bank;

''(ii) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act (12 U.S.C. 221 et seq.) which is made applicable under the International Banking Act of 1978 (12 U.S.C. 3101 et seq.);

''(iii) any foreign bank which does not operate an insured branch;

''(iv) any agency or commercial lending company other than a Federal agency; or

''(v) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978 (12 U.S.C. 3105(c)(1)), including such proceedings under the Financial Institutions Supervisory Act of 1966 (12 U.S.C. 1464 et seq.);

''(D) the Federal Housing Finance Agency, in the case of a swap participant that is a regulated entity (as defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))); and

''(E) the Farm Credit Administration, in the case of a swap participant that is an institution chartered under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).'';

(16) in paragraph (40) (as redesignated by paragraph (1))—

(A) by striking subparagraph (B);

(B) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (B), (C), and (F), respectively;

(C) in subparagraph (C) (as so redesignated), by striking ''and'';

(D) by inserting after subparagraph (C) (as so redesignated) the following:

''(D) a non-security-based swap execution facility registered under section 5h;

''(E) a non-security-based swap data repository; and'';

(17) by inserting after paragraph (41) (as redesignated by paragraph (1)) the following:

''(42) SECURITY-BASED SWAP.—The term 'security-based swap' has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

''(42A) NON-SECURITY-BASED SWAP.—The term 'non-security-based swap' means any swap that is not a security-based swap.'';

(18) in paragraph (45) (as redesignated by paragraph (1)), by striking ''subject to section 2(h)(7)'' and inserting ''subject to section 2(h)(5)'';

(19) by inserting after paragraph (45) (as redesignated by paragraph (1)) the following:

''(46) SWAP.—

''(A) IN GENERAL.—The term 'swap' means any agreement, contract, or transaction that—

''(i) is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 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, nonoccurrence, 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 1 or more payments based on the value or level of 1 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—

''(I) an interest rate swap;

''(II) a rate floor;

''(III) a rate cap;

''(IV) a rate collar;

''(V) a cross-currency rate swap;
''(VI) a basis swap;
''(VII) a currency swap;
''(VIII) a foreign exchange swap;
''(IX) a total return swap;
''(X) a broad-based security index swap;
''(XI) an equity index swap;
''(XII) an equity swap;
''(XIII) a debt index swap;
''(XIV) a debt swap;
''(XV) a credit spread;
''(XVI) a credit default swap;
''(XVII) a credit swap;
''(XVIII) a weather swap;
''(XIX) an energy swap;
''(XX) a metal swap;
''(XXI) an agricultural swap;
''(XXII) an emissions swap; and
''(XXIII) a commodity swap;

''(iv) provides for the purchase or sale, on a fixed, contingent, or variable basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind;

''(v) is an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap; or

''(vi) is any combination or permutation of, or option on, any agreement, contract, or transaction described in clauses (i) through (v).

''(B) EXCLUSIONS.—The term 'swap' does not include—

''(i) any contract of sale of a commodity for future delivery traded on or subject to the rules of any board of trade designated as a contract market under section 5 or 5f;

''(ii) any purchase or sale of a nonfinancial commodity for deferred or delayed shipment or delivery, so long as the transaction provides for physical delivery and is undertaken as part of, or in contemplation of, commercial or merchandising activities;

''(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, in whole or in part, on the value thereof, whether physically or cash settled, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities;

''(iv) any agreement, contract, or transaction that is executed or traded 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 purchase or sale of 1 or more securities on a non-contingent basis for deferred or delayed delivery;

''(vi) any agreement, contract, or transaction providing for the purchase or sale of 1 or more securities (or a net cash payment in lieu thereof) on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities;

''(vii) any agreement, contract, or transaction for the purchase or sale, on an immediate settlement basis within the relevant regular way settlement cycle, of any currency, commodity, security, instrument of indebtedness, financial instrument, or property of any kind, or any interest therein;

''(viii) 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)) or paragraph (10) of this subsection, or that would be a 'swap' pursuant to section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) solely as a result of bearing a variable rate of return;

''(ix) any agreement, contract, or transaction that is—

''(I) based on, or references, 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;

''(x) any security futures product;

''(xi) any agreement, contract, or transaction that is—

''(I) predominantly a banking product as provided in section 405 of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455);

''(II) not marketed or sold as an alternative to a swap; and

''(III) issued or sold by a bank as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

''(xii) any hybrid instrument that is predominantly a security as provided in section 2(f) as in effect on the day before the date of enactment of this paragraph;

''(xiii)(I) any identified banking product specified in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c(a)), that is—

''(aa) not marketed or sold as an alternative to a swap, and

''(bb) issued or sold by a bank, as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)); or

''(II) any agreement, contract, or transaction executed in conjunction with an identified banking product described in subclause (I), between a bank and a borrower that is not an eligible contract participant to convert the variable rate interest cost of debt to a fixed rate interest cost or vice versa, or to limit the maximum interest cost of such debt;

''(xiv) any mortgage or mortgage purchase commitment, or any sale of installment loan contracts or receivables, if such product or instrument is not marketed or sold as an alternative to a swap;

''(xv) any contract, agreement or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank or insurance company for the benefit of any individual or commingled fund available as an investment in a defined contribution plan (as defined in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)) or a qualified tuition program (as defined in section 529 of the Internal Revenue Code of 1986 (26 U.S.C. 529));

''(xvi) any agreement, contract, or transaction a counterparty of which is a Federal Reserve bank, the United States government, a foreign central bank, or a foreign government;

''(xvii) any agreement, contract, or transaction for the performance of services;

''(xviii) any agreement, contract, or transaction that is commercial in nature or employment-related, that is not marketed as a swap, and that would otherwise be a 'swap' pursuant to subparagraph (A) solely as a result of an incidental price, compensation, or rate escalation clause;

''(xix) any agreement, contract, or transaction—

''(I) under which a payment or performance is dependent on the occurrence, non-occurrence, or the extent of the occurrence of a contingency beyond the direct control of the parties to the agreement, contract, or transaction and which conditions such payment or performance obligation on the incurrence of a loss arising from such contingency; and

''(II) that is an insurance or endowment policy or annuity contract or optional annuity contract issued by a corporation that is subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State or territory of the United States or the District of Columbia, unless such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of one or more reference entities;

''(xx) any agreement, contract, or transaction that the Commission, jointly with the Securities and Exchange Commission, determines, by rule or order and consistent with the purposes of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, should be excluded from the definition of swap.

''(47) NON-SECURITY-BASED SWAP DATA REPOSITORY.—The term 'non-security-based swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, non-security-based swaps entered into by third parties.

''(48) NON-SECURITY-BASED SWAP EXECUTION FACILITY.—The term 'non-security-based swap execution facility' means a facility in which multiple participants have the ability to execute or trade non-security-based swaps by accepting bids and offers made by other participants that are open to multiple participants in the facility or system, or confirmation facility, that—

''(A) facilitates the execution of non-security-based swaps between persons; and

''(B) is not a designated contract market.''; and

(20) in paragraph (49) (as redesignated by paragraph (1)), in subparagraph (A)(i), by striking ''partipants'' and inserting ''participants''.

(b) CONFORMING AMENDMENTS.—

(1) Section 2(c)(2)(B)(i)(II) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)(i)(II)) is amended—

(A) an item (cc)—

(i) in subitem (AA), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(ii) in subitem (BB), by striking ''section 1a(20)'' and inserting ''section 1a''; and

(B) in item (dd), by striking ''section 1a(12)(A)(ii)'' and inserting ''section 1a(17)(A)(ii)''.

(2) Section 4m(3) of the Commodity Exchange Act (7 U.S.C. 6m(3)) is amended by striking ''section 1a(6)'' and inserting ''section 1a''.

(3) Section 4q(a)(1) of the Commodity Exchange Act (7 U.S.C. 6o–1(a)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(4) Section 5(e)(1) of the Commodity Exchange Act (7 U.S.C. 7(e)(1)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(5) Section 5a(b)(2)(F) of the Commodity Exchange Act (7 U.S.C. 7a(b)(2)(F)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(6) Section 5b(a) of the Commodity Exchange Act (7 U.S.C. 7a–1(a)) is amended, in the matter preceding paragraph (1), by striking ''section 1a(9)'' and inserting ''section 1a''.

(7) Section 5c(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 7a–2(c)(2)(B)) is amended by striking ''section 1a(4)'' and inserting ''section 1a(9)''.

(8) Section 6(g)(5)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(5)(B)(i)) is amended—

(A) in subclause (I), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(17)(B)(ii)''; and

(B) in subclause (II), by striking ''section 1a(12)'' and inserting ''section 1a(17)''.

(9) The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) in section 402—

(i) in subsection (a)(7), by striking ''section 1a(20)'' and inserting ''section 1a'';

(ii) in subsection (b)(2), by striking ''section 1a(12)'' and inserting ''section 1a'';

(iii) in subsection (c), by striking ''section 1a(4)'' and inserting ''section 1a''; and

(iv) in subsection (d)—

(I) in the matter preceding paragraph (1), by striking ''section 1a(4)'' and inserting ''section 1a(9)'';

(II) in paragraph (1)—

(aa) in subparagraph (A), by striking ''section 1a(12)'' and inserting ''section 1a''; and

(bb) in subparagraph (B), by striking ''section 1a(33)'' and inserting ''section 1a'';

(III) in paragraph (2)—

(aa) in subparagraph (A), by striking ''section 1a(10)'' and inserting ''section 1a'';

(bb) in subparagraph (B), by striking ''section 1a(12)(B)(ii)'' and inserting ''section 1a(18)(B)(ii)'';

(cc) in subparagraph (C), by striking ''section 1a(12)'' and inserting ''section 1a(17)''; and

(dd) in subparagraph (D), by striking ''section 1a(13)'' and inserting ''section 1a''; and

(B) in section 404(1) by striking ''section 1a(4)'' and inserting ''section 1a''.

(c) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

(1) PETITION.—Not later than 60 days after the date of enactment of this Act, a person may submit to the Commodity Futures Trading Commission a petition to remain subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act).

(2) TEMPORARY ALLOWANCE TO OPERATE UNDER SECTION 2(h).—The Commodity Futures Trading Commission—

(A) shall consider any petition submitted under subsection (a) in a prompt manner; and

(B) may allow a person to continue operating subject to section 2(h) of the Commodity Exchange Act (7 U.S.C. 2(h)) (as in effect on the day before the date of enactment of this Act) for not longer than a 1-year period.

(d) AGRICULTURAL SWAPS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no person shall offer to enter into, or confirm the execution of, any swap in an agricultural commodity (as defined by the Commodity Futures Trading Commission).

(2) EXCEPTION.—Notwithstanding paragraph (1), a person may offer to enter into, enter into, or confirm the execution of, any swap in an agricultural commodity pursuant to section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) or any rule, regulation, or order issued thereunder (including any rule, regulation, or order in effect as of the date of enactment of this Act) by the Commodity Futures Trading Commission to allow swaps under such terms and conditions as the Commission shall prescribe.

SEC. 722. JURISDICTION.

(a) EXCLUSIVE JURISDICTION.—Section 2(a)(1)(A) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(A)) is amended in the first sentence—

(1) by inserting ''the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 (including an amendment made by that Act) and'' after ''otherwise provided in'';

(2) by striking ''(c) through (i) of this section'' and inserting ''(c) and (f)'';

(3) by striking ''contracts of sale'' and inserting ''non-security-based swaps or contracts of sale''; and

(4) by striking ''or derivatives transaction execution facility registered pursuant to section 5 or 5a'' and inserting ''pursuant to section 5''.

(b) REGULATION OF SWAPS UNDER FEDERAL AND STATE LAW.—Section 12 of the Commodity Exchange Act (7 U.S.C. 16) is amended by adding at the end the following:

''(h) REGULATION OF SWAPS AS INSURANCE UNDER STATE LAW.—A swap—

''(1) shall not be considered to be insurance; and

''(2) may not be regulated as an insurance contract under the law of any State.''.

(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—Section 2(c)(2)(A) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(A)) is amended—

(1) in clause (i), by striking ''or'' at the end;

(2) by redesignating clause (ii) as clause (iii); and

(3) by inserting after clause (i) the following:

''(ii) a non-security-based swap; or''.

(d) APPLICABILITY.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by section 723(a)(3)) is amended by adding at the end the following:

''(i) APPLICABILITY.—The swap-related provisions of this Act that were enacted by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities—

''(1) have a direct and significant connection with activities in, or effect on, commerce of the United States; or

''(2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of this Act that was enacted by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.''.

SEC. 723. CLEARING.

(a) CLEARING REQUIREMENT.—

(1) IN GENERAL.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) by striking subsections (d), (e), (g), and (h); and

(B) by redesignating subsection (i) as subsection (g).

(2) SWAPS; LIMITATION ON PARTICIPATION.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) (as amended by paragraph (1)) is amended by inserting after subsection (c) the following:

''(d) SWAPS.—Nothing in this Act (other than subparagraphs (A) and (B) of subsection (a)(1), subsections (f) and (g), sections 1a, 2(e), 2(h), 4(c), 4a, 4b, and 4b-1, subsections (a), (b), and (g) of section 4c, sections 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 4p, 4r, 4s, 4t, 5, 5b, 5c, 5e, and 5h, subsections (c) and (d) of section 6, sections 6c, 6d, 8, 8a, and 9, subsections (e)(2) and (f) of section 12, subsections (a) and (b) of section 13, sections 17, 20, 21, and 22(a)(4), and any other provision of this Act that is applicable to registered entities and Commission registrants) governs or applies to a swap.

''(e) LIMITATION ON PARTICIPATION.—It shall be unlawful for any person, other than an eligible contract participant, to enter into a non-security-based swap unless the non-security-based swap is entered into on, or subject to the rules of, a board of trade designated as a contract market under section 5.''.

(3) MANDATORY CLEARING OF NON-SECURITY-BASED SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

''(h) CLEARING REQUIREMENT.—

''(1) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or any group, category, type, or class of swap is required to be cleared.

''(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

''(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

''(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

''(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

''(iv) The ability to value the swap group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

''(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

''(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

''(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

''(C) NON-SECURITY-BASED SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(i) shall review each non-security-based swap, or any group, category, type, or class of non-security-based swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

''(ii) may require, pursuant to the rules adopted under clause (i) and through notice-and-comment rulemaking, that a particular non-security-based swap, group, category, type, or class of non-security-based swap must be cleared if—

''(I) both counterparties are swap participants;

''(II) the transaction was entered into after the later of the date of publication of the rules adopted under subparagraph (A) in the Federal Register or the effective date of the requirement; and

''(III) one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by rule or order, that transactions between certain parties under common control are subject to any requirement to clear under clause (ii); and

''(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii), which economic analysis may refer to any peer-reviewed or other relevant literature conducted by independent researchers.

''(D) EFFECT.—

''(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swap.

''(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap would adversely impact its business operations, impair the financial integrity of the derivatives clearing organization, or pose a threat to the financial stability of the United States.

''(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

''(i) the extent to which the terms of the non-security-based swap, group, category, type, or class of non-security-based swap are similar to the terms of other non-security-based swaps, groups, categories, types, or classes of non-security-based swap that are required to be cleared by swap participants under subparagraph (C); and

''(ii) whether there is an economic purpose for any differences in the terms of the non-security-based swap or group, category, type, or class of non-security-based swap that are required to be cleared by swap participants under subparagraph (C).

''(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a non-security-based swap, group, category, type, or class of non-security-based swap.

''(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require swap participants to clear a particular non-security-based swap, group, category, type, or class of non-security-based swap or to use its authority under subparagraph (F) to rescind a requirement for non-security-based swap participants to clear a particular non-security-based swap, group, category, type, or class of non-security-based swap.

''(H) OPTION TO CLEAR FOR COUNTERPARTIES THAT ARE NOT SWAP PARTICIPANTS.—Before entering into a non-security-based swap transaction, any counterparty that is not a swap participant may elect to clear a non-security-based swap that is subject to a clearing requirement under subparagraph (C). If such counterparty elects to clear, it shall have the sole right to select the derivatives clearing organization or clearing agency at which the non-security-based swap will be cleared.

''(I) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after taking into consideration whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.''.

SEC. 724. SWAPS; SEGREGATION AND BANKRUPTCY TREATMENT.

(a) SEGREGATION REQUIREMENTS FOR CLEARED SWAPS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended by adding at the end the following:

''(f) SWAPS.—

''(1) CLEARED SWAPS.—

''(A) SEGREGATION REQUIRED.—A futures commission merchant or a swap participant shall treat and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to the swap customer as the result of such a swap) as belonging to the swap customer.

''(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swap customer described in subparagraph (A) shall be separately accounted for and shall not be commingled with the funds of the futures commission merchant or the swap participant or be used to margin, secure, or guarantee any trades or contracts of any swap customer or person other than the person for whom the same are held.

''(2) EXCEPTIONS.—

''(A) USE OF FUNDS.—

''(i) IN GENERAL.—Notwithstanding paragraph (1), money, securities, and property of a swap customer of a futures commission merchant or a swap participant described in paragraph (1) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a derivatives clearing organization.

''(ii) WITHDRAWAL.—Notwithstanding paragraph (1), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a derivatives clearing organization, or with any member of the derivatives clearing organization, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

''(B) COMMISSION ACTION.—Notwithstanding paragraph (1), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swap customer of a futures commission merchant or a swap participant described in paragraph (1) may be commingled and deposited as provided in this section with any other money, securities, or property received by the futures commission merchant or swap participant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swap customer of the futures commission merchant.

''(3) PERMITTED INVESTMENTS.—Money described in paragraph (1) may be invested in obligations of the United States or in any other investment that has minimal credit, market, and liquidity risks that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

''(4) COMMODITY CONTRACT.—A non-security-based swap cleared by or through a derivatives clearing organization shall be considered to be a commodity contract as such term is defined in section 761 of title 11, United States Code, with regard to all money, securities, and property of any swap customer received by a futures commission merchant, a swap participant, or a derivatives clearing organization to margin, guarantee, or secure the non-security-based swap (including money, securities, or property accruing to the customer as the result of the swap).

''(5) PROHIBITION.—It shall be unlawful for any person, including any derivatives clearing organization and any depository, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (1) to hold, dispose of, or use any such money, securities, or property as belonging to the depositing futures commission merchant, a swap participant or any person other than the swap customer of the futures commission merchant or swap participant.''.

(b) BANKRUPTCY TREATMENT OF CLEARED NON-SECURITY-BASED SWAPS.—Section 761 of title 11, United States Code, is amended—

(1) in paragraph (4), by striking subparagraph (F) and inserting the following:

''(F)(i) any other contract, option, agreement, or transaction that is similar to a contract, option, agreement, or transaction referred to in this paragraph; and

''(ii) with respect to a futures commission merchant, a swap participant, or a clearing organization, any other contract, option, agreement, or transaction, in each case, that is cleared by a clearing organization''; and

(2) in paragraph (9)(A)(i), by striking ''the commodity futures account'' and inserting ''a commodity contract account''.

(c) SEGREGATION REQUIREMENTS FOR UNCLEARED NON-SECURITY-BASED SWAPS.—Section 4s of the Commodity Exchange Act (as added by section 729) is amended by adding at the end the following:

''(l) SEGREGATION REQUIREMENTS FOR INITIAL MARGIN.—

''(1) SEGREGATION OF INITIAL MARGIN.—

''(A) NOTIFICATION OF RIGHT TO SEGREGATE.—A swap participant shall notify its counterparty before entering into a non-security-based swap transaction of the counterparty's right to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty.

''(B) SEGREGATION AND MAINTENANCE OF FUNDS.—At the request, made before entering into a non-security-based swap transaction, of a counterparty that provides funds or other property as initial margin to a swap participant for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall—

''(i) segregate the funds or other property for the benefit of the counterparty; and

''(ii) in accordance with such rules and regulations as the Commission may promulgate jointly with the Securities and Exchange Commission, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap participant.

''(C) NOTIFICATION OF EXCESS VARIATION MARGIN.—Pursuant to rules or regulations adopted by the Commission, a swap participant who received funds or other property shall notify any counterparty who provided such funds or other property if the swap participant is holding excess net variation margin from that counterparty.

''(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

''(A) apply only to a non-security-based swap between a counterparty and a swap participant that is not submitted for clearing to a derivatives clearing organization; and

''(B)(i) not apply to variation margin payments; and

''(ii) not preclude any commercial arrangement regarding—

''(I) the investment of segregated funds or other property that may only be invested in

such investments as the Commission may permit by rule or regulation; and

''(II) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

''(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—The segregated account described in paragraph (1), if requested by the counterparty, may be—

''(A) carried by an independent third-party custodian; and

''(B) designated as a segregated account for and on behalf of the counterparty.

''(4) REPORTING REQUIREMENT.—If the counterparty does not choose to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall report to the counterparty of the swap participant on a quarterly basis that the back office procedures of the swap participant relating to initial margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 725. DERIVATIVES CLEARING ORGANIZATIONS.

(a) REGISTRATION REQUIREMENT.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by striking subsections (a) and (b) and inserting the following:

''(a) REGISTRATION REQUIREMENT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for a derivatives clearing organization, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization with respect to—

''(A) a contract of sale of a commodity for future delivery (or an option on the contract of sale) or option on a commodity, in each case, unless the contract or option is—

''(i) excluded from this Act by subsection (a)(1)(C)(i), (c), or (f) of section 2; or

''(ii) a security futures product cleared by a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

''(B) a non-security-based swap.

''(2) EXCEPTION.—Paragraph (1) shall not apply to a derivatives clearing organization that is registered with the Commission.

''(b) VOLUNTARY REGISTRATION.—A person that clears 1 or more agreements, contracts, or transactions that are not required to be cleared under this Act may register with the Commission as a derivatives clearing organization.''.

(b) REGISTRATION FOR BANKS AND CLEARING AGENCIES; EXEMPTIONS; ANNUAL REPORTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) is amended by adding at the end the following:

''(g) REQUIRED REGISTRATION FOR BANKS AND CLEARING AGENCIES.—A person that is required to be registered as a derivatives clearing organization under this section shall register with the Commission regardless of whether the person is also licensed as a bank or a clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

''(h) EXISTING BANKS AND CLEARING AGENCIES.—

''(1) IN GENERAL.—A bank or clearing agency registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) that is required to be registered as a derivatives clearing organization under this section is deemed to be registered under this section to the extent that, before date of enactment of this subsection—

''(A) the bank cleared swaps as a multilateral clearing organization; or

''(B) the clearing agency cleared swaps.

''(2) CONVERSION OF BANK.—A bank to which this paragraph applies may, by the vote of the shareholders owning not less than 51 percent of the voting interests of the bank, be converted into a State corporation, partnership, limited liability company, or similar legal form pursuant to a plan of conversion, if the conversion is not in contravention of applicable State law.''.

(c) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—Section 5b(c) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)) is amended by striking paragraph (2) and inserting the following:

''(2) CORE PRINCIPLES FOR DERIVATIVES CLEARING ORGANIZATIONS.—

''(A) COMPLIANCE.—

''(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with each core principle described in this paragraph and any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(ii) DISCRETION OF DERIVATIVES CLEARING ORGANIZATION.—Subject to any rule or regulation prescribed by the Commission, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle described in this paragraph.

''(B) FINANCIAL RESOURCES.—

''(i) IN GENERAL.—Each derivatives clearing organization shall have adequate financial, operational, and managerial resources, as determined by the Commission, to discharge each responsibility of the derivatives clearing organization.

''(ii) MINIMUM AMOUNT OF FINANCIAL RESOURCES.—Each derivatives clearing organization shall possess financial resources that, at a minimum, exceed the total amount that would—

''(I) enable the derivatives clearing organization to meet each financial obligation of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

''(II) enable the derivatives clearing organization to cover the operating costs of the derivatives clearing organization for a period of 1 year (as calculated on a rolling basis).

''(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—

''(i) IN GENERAL.—Each derivatives clearing organization shall establish—

''(I) appropriate admission and continuing eligibility standards (including sufficient financial resources and operational capacity to meet obligations arising from participation in the derivatives clearing organization) for members of, and participants in, the derivatives clearing organization; and

''(II) appropriate standards for determining the eligibility of agreements, contracts, and transactions submitted to the derivatives clearing organization for clearing.

''(ii) REQUIRED PROCEDURES.—Each derivatives clearing organization shall establish and implement procedures to verify, on an ongoing basis, the compliance of each participation and membership requirement of the derivatives clearing organization.

''(iii) REQUIREMENTS.—The participation and membership requirements of each derivatives clearing organization shall—

''(I) be objective;

''(II) be publicly disclosed; and

''(III) permit fair and open access.

''(iv) OFFSETTING ECONOMICALLY EQUIVALENT POSITIONS.—The rules of a registered derivatives clearing organization shall prescribe that all swaps with the same terms and conditions are economically equivalent and may be offset with each other within the derivatives clearing organization.

''(D) RISK MANAGEMENT.—

''(i) IN GENERAL.—Each derivatives clearing organization shall ensure that the derivatives clearing organization possesses the ability to manage the risks associated with discharging the responsibilities of the derivatives clearing organization through the use of appropriate tools and procedures.

''(ii) MEASUREMENT OF CREDIT EXPOSURE.—Each derivatives clearing organization shall—

''(I) not less than once during each business day of the derivatives clearing organization, measure the credit exposures of the derivatives clearing organization to each member and participant of the derivatives clearing organization; and

''(II) monitor each exposure described in subclause (I) periodically during the business day of the derivatives clearing organization.

''(iii) LIMITATION OF EXPOSURE TO POTENTIAL LOSSES FROM DEFAULTS.—Each derivatives clearing organization, through margin requirements and other risk control mechanisms, shall limit the exposure of the derivatives clearing organization to potential losses from defaults by members and participants of the derivatives clearing organization to ensure that—

''(I) the operations of the derivatives clearing organization would not be disrupted; and

''(II) nondefaulting members or participants would not be exposed to losses that nondefaulting members or participants cannot anticipate or control.

''(iv) MARGIN REQUIREMENTS.—The margin required from each member and participant of a derivatives clearing organization shall be sufficient to cover potential exposures in normal market conditions.

''(v) REQUIREMENTS REGARDING MODELS AND PARAMETERS.—Each model and parameter used in setting margin requirements under clause (iv) shall be—

''(I) risk-based; and

''(II) reviewed on a regular basis.

''(E) SETTLEMENT PROCEDURES.—Each derivatives clearing organization shall—

''(i) complete money settlements on a timely basis (but not less frequently than once each business day);

''(ii) employ money settlement arrangements to eliminate or strictly limit the exposure of the derivatives clearing organization to settlement bank risks (including credit and liquidity risks from the use of banks to effect money settlements);

''(iii) ensure that money settlements are final when effected;

''(iv) maintain an accurate record of the flow of funds associated with each money settlement;

''(v) possess the ability to comply with each term and condition of any permitted netting or offset arrangement with any other clearing organization;

''(vi) regarding physical settlements, establish rules that clearly state each obligation of the derivatives clearing organization with respect to physical deliveries; and

''(vii) ensure that each risk arising from an obligation described in clause (vi) is identified and managed.

''(F) TREATMENT OF FUNDS.—

''(i) REQUIRED STANDARDS AND PROCEDURES.—Each derivatives clearing organization shall establish standards and procedures that are designed to protect and ensure the safety of member and participant funds and assets.

''(ii) HOLDING OF FUNDS AND ASSETS.—Each derivatives clearing organization shall hold member and participant funds and assets in a manner by which to minimize the risk of

loss or of delay in the access by the derivatives clearing organization to the assets and funds.

''(iii) PERMISSIBLE INVESTMENTS.—Funds and assets invested by a derivatives clearing organization shall be held in instruments with minimal credit, market, and liquidity risks.

''(G) DEFAULT RULES AND PROCEDURES.—

''(i) IN GENERAL.—Each derivatives clearing organization shall have rules and procedures designed to allow for the efficient, fair, and safe management of events during which members or participants—

''(I) become insolvent; or

''(II) otherwise default on the obligations of the members or participants to the derivatives clearing organization.

''(ii) DEFAULT PROCEDURES.—Each derivatives clearing organization shall—

''(I) clearly state the default procedures of the derivatives clearing organization;

''(II) make publicly available the default rules of the derivatives clearing organization; and

''(III) ensure that the derivatives clearing organization may take timely action—

''(aa) to contain losses and liquidity pressures; and

''(bb) to continue meeting each obligation of the derivatives clearing organization.

''(H) RULE ENFORCEMENT.—Each derivatives clearing organization shall—

''(i) maintain adequate arrangements and resources for—

''(I) the effective monitoring and enforcement of compliance with the rules of the derivatives clearing organization; and

''(II) the resolution of disputes;

''(ii) have the authority and ability to discipline, limit, suspend, or terminate the activities of a member or participant due to a violation by the member or participant of any rule of the derivatives clearing organization; and

''(iii) report to the Commission regarding rule enforcement activities and sanctions imposed against members and participants as provided in clause (ii).

''(I) SYSTEM SAFEGUARDS.—Each derivatives clearing organization shall—

''(i) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures, and automated systems, that are reliable, secure, and have adequate scalable capacity;

''(ii) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for—

''(I) the timely recovery and resumption of operations of the derivatives clearing organization; and

''(II) the fulfillment of each obligation and responsibility of the derivatives clearing organization; and

''(iii) periodically conduct tests to verify that the backup resources of the derivatives clearing organization are sufficient to ensure daily processing, clearing, and settlement.

''(J) REPORTING.—Each derivatives clearing organization shall provide to the Commission all information that the Commission determines to be necessary to conduct oversight of the derivatives clearing organization.

''(K) RECORDKEEPING.—Each derivatives clearing organization shall maintain records of all activities related to the business of the derivatives clearing organization as a derivatives clearing organization—

''(i) in a form and manner that is acceptable to the Commission; and

''(ii) for a period of not less than 5 years.

''(L) PUBLIC INFORMATION.—

''(i) IN GENERAL.—Each derivatives clearing organization shall provide to market participants sufficient information to enable the market participants to identify and evaluate accurately the risks and costs associated with using the services of the derivatives clearing organization.

''(ii) AVAILABILITY OF INFORMATION.—Each derivatives clearing organization shall make information concerning the rules and operating procedures governing the clearing and settlement systems of the derivatives clearing organization available to market participants.

''(iii) PUBLIC DISCLOSURE.—Each derivatives clearing organization shall disclose publicly and to the Commission information concerning—

''(I) the terms and conditions of each contract, agreement, and other transaction cleared and settled by the derivatives clearing organization;

''(II) each clearing and other fee that the derivatives clearing organization charges the members and participants of the derivatives clearing organization;

''(III) the margin-setting methodology, and the size and composition, of the financial resource package of the derivatives clearing organization;

''(IV) daily settlement prices, volume, and open interest for each contract settled or cleared by the derivatives clearing organization; and

''(V) any other matter relevant to participation in the settlement and clearing activities of the derivatives clearing organization.

''(M) INFORMATION-SHARING.—Each derivatives clearing organization shall—

''(i) enter into, and abide by the terms of, each appropriate and applicable domestic and international information-sharing agreement; and

''(ii) use relevant information obtained from each agreement described in clause (i) in carrying out the risk management program of the derivatives clearing organization.

''(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, a derivatives clearing organization may not—

''(i) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(ii) impose any material anticompetitive burden.

''(O) GOVERNANCE FITNESS STANDARDS.—

''(i) GOVERNANCE ARRANGEMENTS.—Each derivatives clearing organization shall establish governance arrangements that are transparent—

''(I) to fulfill public interest requirements; and

''(II) to support the objectives of owners and participants.

''(ii) FITNESS STANDARDS.—Each derivatives clearing organization shall establish and enforce appropriate fitness standards for—

''(I) directors;

''(II) members of any disciplinary committee;

''(III) members of the derivatives clearing organization;

''(IV) any other individual or entity with direct access to the settlement or clearing activities of the derivatives clearing organization; and

''(V) any party affiliated with any individual or entity described in this clause.

''(P) CONFLICTS OF INTEREST.—Each derivatives clearing organization shall—

''(i) establish and enforce rules to minimize conflicts of interest in the decision-making process of the derivatives clearing organization; and

''(ii) establish a process for resolving conflicts of interest described in clause (i).

''(Q) COMPOSITION OF GOVERNING BOARDS.—Each derivatives clearing organization shall ensure that the composition of the governing board or committee of the derivatives clearing organization includes market participants.

''(R) LEGAL RISK.—Each derivatives clearing organization shall have a well-founded, transparent, and enforceable legal framework for each aspect of the activities of the derivatives clearing organization.''.

(d) REPORTING REQUIREMENTS.—Section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) (as amended by subsection (b)) is amended by adding at the end the following:

''(j) REPORTING REQUIREMENTS.—

''(1) DUTY OF DERIVATIVES CLEARING ORGANIZATIONS.—Each derivatives clearing organization that clears non-security-based swaps shall provide to the Commission all information that is determined by the Commission to be necessary to perform each responsibility of the Commission under this Act.

''(2) DATA COLLECTION AND MAINTENANCE REQUIREMENTS.—The Commission shall adopt data collection and maintenance requirements for non-security-based swaps cleared by derivatives clearing organizations that are comparable to the corresponding requirements for non-security-based swaps data reported to non-security-based swap data repositories.

''(3) INFORMATION SHARING.—The Commission shall require derivatives clearing organizations to provide information collected under paragraph (2) to any of the following regulatory authorities that requires it—

''(A) the Board;

''(B) the Securities and Exchange Commission;

''(C) each appropriate prudential regulator;

''(D) the Financial Stability Oversight Council;

''(E) the Department of Justice; and

''(F) any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(4) PUBLIC INFORMATION.—Each derivatives clearing organization that clears non-security-based swaps shall provide to the Commission (including any designee of the Commission) information under paragraph (2) in such form and at such frequency as is required by the Commission to comply with the public reporting requirements contained in section 2(a)(13).''.

(e) PUBLIC DISCLOSURE.—Section 8(e) of the Commodity Exchange Act (7 U.S.C. 12(e)) is amended in the last sentence—

(1) by inserting '', central bank and ministries,'' after ''department'' each place it appears; and

(2) by striking ''. is a party.'' and inserting '', is a party.''.

(f) LEGAL CERTAINTY FOR IDENTIFIED BANKING PRODUCTS.—

(1) REPEALS.—The Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27 et seq.) is amended—

(A) by striking sections 404 and 407 (7 U.S.C. 27b, 27e);

(B) in section 402 (7 U.S.C. 27), by striking subsection (d); and

(C) in section 408 (7 U.S.C. 27f)—

(i) in subsection (c)—

(I) by striking ''in the case'' and all that follows through ''a hybrid'' and inserting ''in the case of a hybrid'';

(II) by striking ''; or'' and inserting a period; and

(III) by striking paragraph (2);

(ii) by striking subsection (b); and

(iii) by redesignating subsection (c) as subsection (b).

(2) LEGAL CERTAINTY FOR BANK PRODUCTS ACT OF 2000.—Section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a) is amended to read as follows:

SEC. 726. TRANSPARENCY OF SWAP TRANSACTION DATA.

(a) PURPOSES.—The Commodity Futures Trading Commission is directed, consistent with the purposes of this title, to use its authority under this title to facilitate the prompt and accurate collection, calculation, processing or preparation, and public dissemination of information on transactions and positions in non-security-based swaps.

(b) TRANSPARENCY OF NON-SECURITY-BASED SWAP TRANSACTION DATA.—The Commodity Exchange Act is amended by inserting after section 4q (7 U.S.C. 6o–1) the following:

"SEC. 4r. REPORTING AND RECORDKEEPING FOR NON-SECURITY-BASED SWAPS.

''(a) MANDATORY REPORTING OF NON-SECURITY-BASED SWAP TRANSACTIONS.—

''(1) IN GENERAL.—Any person that enters into or effects a transaction in a non-security-based swap shall report such transaction through a derivatives clearing organization or a non-security-based swap data repository registered with the Commission pursuant to section 21 within the period specified by any rule or regulation adopted by the Commission under this paragraph. If no registered non-security-based swap data repository accepts the non-security-based swap, the person shall report the transaction to the Commission pursuant to the requirements that the Commission may by rule or regulation prescribe. Each transaction report shall disclose whether the transaction is a bona fide hedging swap transaction as defined in section 1a(33B) and any other information that the Commission has, by rule or regulation, prescribed as necessary or appropriate in furtherance of the purposes of this section.

''(2) PERMISSIBLE REPORTING FOR A COUNTERPARTY THAT IS NOT A SWAP PARTICIPANT.—A swap participant may report a transaction on behalf of its counterparty to that transaction provided that counterparty is not a swap participant.

''(3) RULEMAKING REQUIRED.—Not later than 180 days after the date of enactment of this section, the Commission shall by rule or regulation establish a schedule for the reporting through a derivatives clearing organization or registered non-security-based swap data repository or to the Commission of each non-security-based swap, group, category, type, or class of non-security-based swap entered into—

''(A) before the effective date of the Commission's rule or regulation and still outstanding as of such effective date; and

''(B) on or after the effective date of the Commission's rule or regulation.

''(b) CONFIDENTIALITY OF INFORMATION PROVIDED.—No non-public information provided to or obtained by the Commission under this section may be disclosed to any other person. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or foreign government with which the Commission has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(c) PUBLIC DISSEMINATION OF CERTAIN INFORMATION PROVIDED.—

''(1) IN GENERAL.—Notwithstanding subsection (b), the Commission is directed to use its authority under this Act to facilitate the public dissemination of prices and volumes of completed non-security-based swap transactions to provide investors and other market participants with information about recently executed transactions for the purposes of helping them to mark existing swap positions to market, make informed decisions before executing future transactions, and assess the quality of transactions they have executed. For each non-security-based swap, group, category, type, or class of non-security-based swap, the Commission shall determine by rule the extent to which individual or aggregated transaction data must be disseminated and the timeliness of such disseminations.

''(2) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission shall rely on economic analyses provided by the Chief Economist of the Commission and independent researchers that empirically evaluate the effects of increasing price transparency on measures of efficiency, competition, and market quality, including transaction costs and liquidity. To facilitate such empirical analyses, the Commission may design pilot programs that increase price transparency on selected non-security-based swaps.

''(3) CHIEF ECONOMIST REPORT.—Whenever the Commission publishes a release giving notice of a proposed rulemaking under this subsection, and affords interested persons an opportunity to comment on such proposed rulemaking or publishes a release adopting a final rule, such release shall include as a part thereof a report by the Chief Economist of the Commission. Each report shall describe the economic analysis of the expected consequences of the proposed or final Commission action, refer to any peer-reviewed or other literature, including any empirical study undertaken by the staff of the Commission, that is relevant to the analysis contained in the report, and describe the extent to which the conclusions of the report remain subject to uncertainty.

''(4) PROTECTION OF PROPRIETARY INFORMATION.—In making determinations under this subsection, the Commission shall consider whether public dissemination of individual or aggregate transaction data could result in the dissemination of proprietary information about the swap transactions, positions, trading strategies, or the ability of particular market participants to conduct effective hedging or risk management. The rules that the Commission adopts under this subsection shall include protections to ensure that the public dissemination of swap transaction data does not result in the disclosure of such proprietary information.''.

''(5) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require derivatives clearing organizations and registered non-security-based swap data repositories to publicly disseminate the non-security-based swap transaction and pricing data required to be reported under this paragraph.

''(6) QUARTERLY PUBLIC REPORTING OF AGGREGATE NON-SECURITY-BASED SWAP DATA.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a quarterly basis to make available to the public information relating to—

''(i) the trading and clearing in the major non-security-based swap categories; and

''(ii) the market participants and developments in new products.

''(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

''(i) use any information reported directly to the Commission and information from registered non-security-based swap data repositories and derivatives clearing organizations; and

''(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.''.

SEC. 727. SWAP DATA REPOSITORIES.

The Commodity Exchange Act is amended by inserting after section 20 (7 U.S.C. 24) the following:

"SEC. 21. NON-SECURITY-BASED SWAP DATA REPOSITORIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—A non-security-based swap data repository may register by filing with the Commission an application in such form as the Commission, by rule or regulation, shall prescribe containing such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

''(2) INSPECTION AND EXAMINATION.—Each registered non-security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

''(3) INFORMATION SHARING.—The Commission shall require each registered non-security-based swap data repository to provide information with respect to its functions as a non-security-based swap data repository to any of the following regulatory authorities that requests it—

''(A) the Board;

''(B) the Securities and Exchange Commission;

''(C) each appropriate prudential regulator;

''(D) the Financial Stability Oversight Council;

''(E) the Department of Justice; and

''(F) any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(b) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each non-security-based swap, including whether the transaction is a bona fide hedging swap transaction as defined in section 1a, that shall be collected and maintained by each registered non-security-based swap data repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for non-security-based swap data repositories.

''(3) 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 in connection with their clearing of non-security-based swaps.

''(c) DUTIES.—A registered non-security-based swap data repository shall—

''(1) accept data prescribed by the Commission for one or more non-security-based swaps;

''(2) confirm with both counterparties to the non-security-based swap the accuracy of the data that was submitted;

''(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

''(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

''(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements contained in section 726 of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010;

''(5) at the direction of the Commission, establish automated systems for monitoring,

screening, and analyzing non-security-based swap data;

''(6) maintain the confidentiality non-security-based swap transaction information that the registered non-security-based swap data repository receives from a counterparty, swap participant, or any other registered entity in accordance with the requirements that the Commission shall jointly with the Securities and Exchange Commission prescribe through notice-and-comment rulemaking.

''(d) CORE PRINCIPLES APPLICABLE TO REGISTERED NON-SECURITY-BASED SWAP DATA REPOSITORIES.—

''(1) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a registered non-security-based swap data repository may not—

''(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

''(2) GOVERNANCE ARRANGEMENTS.—Each registered non-security-based swap data repository shall establish governance arrangements that are transparent and assure fair representation of its participants in reasonable proportion to their use of the non-security-based data repository in the selection of its directors and administration of its affairs.

''(3) CONFLICTS OF INTEREST.—Each registered non-security-based swap data repository shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the non-security-based swap data repository; and

''(B) establish a process for resolving conflicts of interest described in subparagraph (A).

''(4) NONDISCRIMINATORY ACCESS.—A registered non-security-based swap data repository—

''(A) may not mandate directly or indirectly the substantive terms and conditions of transactions reported to the non-security-based data repository;

''(B) must provide for the equitable allocation of reasonable dues, fees, and other charges among its participants and must not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants;

''(C) provide for participation in the non-security-based swap data repository by any swap participant and any other person or class of persons as the Commission, by rule or regulation, may determine to be necessary or appropriate in furtherance of the purposes of this section; and

''(D) may not unfairly discriminate in the admission of participants or among participants in the use of the non-security-based swap data repository.

''(e) RULES.—The Commission shall adopt rules, jointly with the Securities and Exchange Commission, governing persons that are registered under this section.''.

SEC. 728. LARGE NON-SECURITY-BASED SWAP TRADER REPORTING.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by adding after section 4s (as added by section 729) the following:

''SEC. 4t. LARGE NON-SECURITY-BASED SWAP TRADER REPORTING.

''(a) PROHIBITION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to enter into any non-security-based swap that the Commission determines to perform a significant price discovery function with respect to registered entities if—

''(A) the person directly or indirectly enters into the non-security-based swap during any 1 day in an amount equal to or in excess of such amount as shall be established periodically by the Commission; and

''(B) the person directly or indirectly has or obtains a position in the non-security-based swap equal to or in excess of such amount as shall be established periodically by the Commission.

''(2) EXCEPTION.—Paragraph (1) shall not apply if—

''(A) the person files or causes to be filed with the properly designated officer of the Commission such reports regarding any transactions or positions described in subparagraphs (A) and (B) of paragraph (1) as the Commission may require by rule or regulation; and

''(B) in accordance with the rules and regulations of the Commission, the person keeps books and records of all such non-security-based swaps and any transactions and positions in any related commodity traded on or subject to the rules of any board of trade, and of cash or spot transactions in, inventories of, and purchase and sale commitments of, such a commodity.

''(b) REQUIREMENTS.—Books and records described in subsection (a)(2)(B) shall—

''(1) show such complete details concerning all transactions and positions as the Commission may prescribe by rule or regulation; and

''(2) be open at all times to inspection and examination by any representative of the Commission.

''(c) APPLICABILITY.—For purposes of this section, the non-security-based swaps, futures, and cash or spot transactions and positions of any person shall include the non-security-based swaps, futures, and cash or spot transactions and positions of any persons directly or indirectly controlled by the person.

''(d) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to whether a non-security-based swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider the factors described in section 4a(a)(3).''.

SEC. 729. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 4r (as added by section 726) the following:

''SEC. 4s. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

''(a) REGISTRATION.—Swap participants must register with the Commission.

''(b) NOTICE REGISTRATION.—A swap participants shall be exempt from registration with the Commission, if it files a notice registration with the Commission in the form and manner that the Commission shall prescribe, jointly with the Securities and Exchange Commission, by notice-and-comment rulemaking and—

''(1) it is exempt pursuant to a rule or order, issued by the Commission, jointly with the Securities and Exchange Commission, to exempt swap participants that engage primarily in security-based swap transactions and are registered as swap participants with the Securities and Exchange Commission; or

''(2) all of its outstanding swap transactions are cleared swaps.

''(c) REQUIREMENTS.—

''(1) IN GENERAL.—A person shall register as a swap participant by filing a registration application with the Commission.

''(2) CONTENTS.—

''(A) IN GENERAL.—The application shall be made in such form and manner and containing such information as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, shall prescribe concerning the swap participant's swap activities.

''(B) CONTINUAL REPORTING.—A person that is registered as a swap participant shall continue to submit to the Commission reports that contain such information pertaining to the swap participant's swap activities as the Commission may require.

''(3) TRANSITION.—Rules under this section shall provide for the registration of swap participants 1 year after the date of enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(4) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap participant to permit any person associated with a swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap participant, if the swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(d) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) CAPITAL REQUIREMENTS FOR PRUDENTIALLY REGULATED SWAP PARTICIPANTS.—Each swap participant for which there is a prudential regulator shall meet such minimum capital requirements as such prudential regulator shall prescribe pursuant to the authority of the prudential regulator.

''(2) MARGIN REQUIREMENTS FOR SWAP PARTICIPANTS FOR UNCLEARED NON-SECURITY-BASED SWAPS.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the Commission shall prescribe by rule or regulation the minimum margin requirements that apply to transactions between swap participants in a particular uncleared non-security-based swap or any group, category, type, or class of uncleared non-security-based swap, as the Commission deems appropriate for the risk of that particular uncleared non-security-based swap or class, group, category, type of uncleared non-security-based swap, for the purposes of—

''(i) reducing the risk of losses to counterparties; and

''(ii) preserving the financial integrity of markets trading non-security-based swaps.

''(B) CONSIDERATIONS.—The Commission shall not issue rules under this subsection unless the Commission determines that such rules—

''(i) would not inappropriately encourage or discourage the clearing of certain non-security-based swaps, resulting in an undue increase in risk to the financial system;

''(ii) are supported by economic analysis provided by the Chief Economist of the Commission; and

''(iii) would not impose any unnecessary burden on competition.

''(C) EXCEPTIONS.—The Commission shall not impose minimum margin requirements on—

''(i) positions in foreign exchange forwards, swaps, or options; and

''(ii) non-security-based swap transactions in which one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by notice-and-comment rulemaking, that transactions between certain parties under common control are subject to the minimum margin requirements imposed by the Commission under this subsection.

''(D) OUTSTANDING SWAP POSITIONS.—The Commission and the Securities and Exchange Commission may by joint notice-and-comment rulemaking or order exempt any

swap, group, category, type, or class of swap entered into on or before the date of enactment of this Act. In determining whether an exemption is appropriate, the Commission and the Securities and Exchange Commission shall take into account the notional value, the tenor, and the risk to the financial stability of the United States posed by the underlying swap, group, category, type, or class of swap.

''(3) SPECIAL MARGIN REQUIREMENTS FOR UNCLEARED SWAP TRANSACTIONS INVOLVING A SWAP PARTICIPANT WITH A SUBSTANTIAL NET UNCOLLATERALIZED SWAP POSITION.—

''(A) IN GENERAL.—If a swap participant has a substantial net uncollateralized swap position, any subsequent swap transaction, regardless of whether the swap participant's counterparty is a swap participant, shall be subject to—

''(i) any applicable clearing requirement under section (h); and

''(ii) any applicable margin requirements that the Commission has prescribed under paragraph (2).

''(B) SUBSTANTIAL NET UNCOLLATERALIZED POSITION.—

''(i) IN GENERAL.—From time to time, the Financial Stability Oversight Council shall define, by rule or regulation, 'substantial net uncollateralized swap position' by identifying the level of a net uncollateralized position in swaps that a swap participant can hold without posing a threat to the financial system stability of the United States.

''(ii) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission and the Board of Governors shall rely on economic analysis provided by economists of the Commission and economists of the Board of Governors.

''(e) REPORTING AND RECORDKEEPING.—With respect to its swap business, each swap participant registered with the Commission—

''(1) shall make such reports as are required by the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking;

''(2)(A) for which there is a prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the prudential regulator; and

''(B) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as is prescribed by the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, by rule or regulation; and

''(3) shall keep books and records described in subparagraph (B) open to inspection and examination by any representative of the Commission.

''(f) BUSINESS CONDUCT STANDARDS AND REQUIREMENTS.—With respect to its swap business, each swap participant—

''(1) for which there is a prudential regulator, shall comply with such business conduct standards and requirements as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall comply with such business conduct standards and requirements as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, shall prescribe. Such business conduct requirements shall—

''(A) establish the standard of care required for a swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant; and

''(B) require disclosure by the swap participant to any counterparty to the swap (other than a counterparty that is a swap participant) of—

''(i) information about the material risks and characteristics of the swap; and

''(ii) any material conflicts of interest that the swap participant may have in connection with the swap.

''(g) DOCUMENTATION AND BACK OFFICE STANDARDS.—Each swap participant registered with the Commission—

''(1) for which there is a prudential regulator, shall comply with such documentation and back office standards as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall conform with such standards as the Commission, jointly with the Securities and Exchange Commission through notice-and-comment rulemaking, may prescribe that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all swaps.

''(h) CONFIDENTIALITY.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule or regulation to be reported to the Commission under this subsection, except that nothing in this paragraph authorizes the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.''.

SEC. 730. NON-SECURITY-BASED SWAP EXECUTION FACILITIES.

The Commodity Exchange Act is amended by inserting after section 5g (7 U.S.C. 7b–2) the following:

''SEC. 5h. NON-SECURITY-BASED SWAP EXECUTION FACILITIES.

''(a) REGISTRATION.—

''(1) IN GENERAL.—No person may operate a facility for the trading or processing of non-security-based swaps unless the facility is registered as a non-security-based swap execution facility or as a designated contract market under this section.

''(2) DUAL REGISTRATION.—Any person that is required to register as a non-security-based swap execution facility under this section shall register with the Commission regardless of whether the person also is registered with the Securities and Exchange Commission.

''(b) TRADING AND TRADE PROCESSING.—A non-security-based swap execution facility that is registered under subsection (a) may—

''(1) make available for trading any non-security-based swap; and

''(2) facilitate trade processing of any non-security-based swap.

''(c) TRADING BY CONTRACT MARKETS.—A board of trade that operates a contract market shall, to the extent that the board of trade also operates a non-security-based swap execution facility and uses the same electronic trade execution system for trading on the contract market and the non-security-based swap execution facility, identify whether the electronic trading is taking place on the contract market or the non-security-based swap execution facility.

''(d) CORE PRINCIPLES FOR NON-SECURITY-BASED SWAP EXECUTION FACILITIES.—

''(1) COMPLIANCE WITH CORE PRINCIPLES.—

''(A) IN GENERAL.—To be registered, and maintain registration, as a non-security-based swap execution facility, the non-security-based swap execution facility shall comply with—

''(i) the core principles described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) REASONABLE DISCRETION OF NON-SECURITY-BASED SWAP EXECUTION FACILITY.—Unless otherwise determined by the Commission by rule or regulation, a non-security-based swap execution facility described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the non-security-based swap execution facility complies with the core principles described in this subsection.

''(2) COMPLIANCE WITH RULES.—A non-security-based swap execution facility shall—

''(A) monitor and enforce compliance with any rule of the non-security-based swap execution facility, including—

''(i) the terms and conditions of the non-security-based swaps traded or processed on or through the non-security-based swap execution facility; and

''(ii) any limitation on access to the non-security-based swap execution facility; and

''(B) establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means—

''(i) to provide market participants with impartial access to the market; and

''(ii) to capture information that may be used in establishing whether rule violations have occurred.

''(3) SWAPS NOT READILY SUSCEPTIBLE TO MANIPULATION.—The non-security-based swap execution facility shall permit trading only in non-security-based swaps that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING AND TRADE PROCESSING.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules or terms and conditions defining, or specifications detailing—

''(i) trading procedures to be used in entering and executing orders traded on or through the facilities of the non-security-based swap execution facility; and

''(ii) procedures for trade processing of non-security-based swaps on or through the facilities of the non-security-based swap execution facility; and

''(B) monitor trading in non-security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(5) INFORMATION SHARING.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in this section;

''(B) provide the information to the following on request—

''(i) the Commission;

''(ii) the Securities and Exchange Commission;

''(iii) the Board;

''(iv) each appropriate prudential regulator;

''(v) the Council;

''(vi) the Department of Justice; and

''(vii) any other foreign regulatory authority that the Commission determines to be appropriate and with whom the Commission has entered into an information sharing agreement; and

''(C) have the capacity to carry out such international information-sharing agreements as the Commission may require.

''(6) POSITION LIMITS OR ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the non-security-based swap execution facility shall adopt for each of the contracts of the facility, as is necessary and appropriate, position limitations or position accountability for speculators.

''(B) POSITION LIMITS.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the non-security-based swap execution facility shall set its position limitation at a level no higher than the Commission limitation.

''(C) POSITION ENFORCEMENT.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), a non-security-based swap execution facility shall reject any proposed non-security-based swap transaction if, based on information readily available to a non-security-based swap execution facility, any proposed non-security-based swap transaction would cause a non-security-based swap execution facility customer that would be a party to such swap transaction to exceed such position limitation.

''(7) FINANCIAL INTEGRITY OF TRANSACTIONS.—The non-security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of non-security-based swaps entered on or through the facilities of the non-security-based swap execution facility, including the clearance and settlement of the non-security-based swaps pursuant to section 2(h)(1).

''(8) EMERGENCY AUTHORITY.—The non-security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any non-security-based swap or to suspend or curtail trading in a non-security-based swap.

''(9) TIMELY PUBLICATION OF TRADING INFORMATION.—

''(A) IN GENERAL.—The non-security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on non-security-based swaps to the extent prescribed by the Commission.

''(B) CAPACITY OF NON-SECURITY-BASED SWAP EXECUTION FACILITY.—The non-security-based swap execution facility shall be required to have the capacity to electronically capture trade information with respect to transactions executed on the facility.

''(10) RECORDKEEPING AND REPORTING.—

''(A) IN GENERAL.—A non-security-based swap execution facility shall—

''(i) maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of 5 years; and

''(ii) report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under this Act.

''(B) REQUIREMENTS.—The Commission shall adopt data collection and reporting requirements for non-security-based swap execution facilities that are comparable to corresponding requirements for derivatives clearing organizations and non-security-based swap data repositories.

''(11) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the non-security-based swap execution facility shall avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

''(B) imposing any material anticompetitive burden on trading or clearing.

''(12) CONFLICTS OF INTEREST.—The non-security-based swap execution facility shall—

''(A) establish and enforce rules to minimize conflicts of interest in its decision-making process; and

''(B) establish a process for resolving the conflicts of interest.

''(13) FINANCIAL RESOURCES.—

''(A) IN GENERAL.—The non-security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the non-security-based swap execution facility.

''(B) DETERMINATION OF RESOURCE ADEQUACY.—The financial resources of a non-security-based swap execution facility shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the non-security-based swap execution facility to cover the operating costs of the non-security-based swap execution facility for a 1-year period, as calculated on a rolling basis.

''(14) SYSTEM SAFEGUARDS.—The non-security-based swap execution facility shall—

''(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that—

''(i) are reliable and secure; and

''(ii) have adequate scalable capacity;

''(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that are designed to allow for—

''(i) the timely recovery and resumption of operations; and

''(ii) the fulfillment of the responsibilities and obligation of the non-security-based swap execution facility; and

''(C) periodically conduct tests to verify that the backup resources of the non-security-based swap execution facility are sufficient to ensure continued—

''(i) order processing and trade matching;

''(ii) price reporting;

''(iii) market surveillance and

''(iv) maintenance of a comprehensive and accurate audit trail.

''(e) EXEMPTIONS.—The Commission may exempt, conditionally or unconditionally, a non-security-based swap execution facility from registration under this section if the Commission finds that the facility is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the Securities and Exchange Commission, a prudential regulator, or the appropriate governmental authorities in the home country of the facility.

''(f) RULES.—The Commission shall prescribe rules governing the regulation of alternative non-security-based swap execution facilities under this section.''.

SEC. 731. DERIVATIVES TRANSACTION EXECUTION FACILITIES AND EXEMPT BOARDS OF TRADE.

(a) IN GENERAL.—Sections 5a and 5d of the Commodity Exchange Act (7 U.S.C. 7a, 7a–3) are repealed.

(b) CONFORMING AMENDMENTS.—

(1) Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(A) in subsection (a)(1)(A), in the first sentence, by striking ''or 5a''; and

(B) in paragraph (2) of subsection (g) (as redesignated by section 723(a)(1)(B)), by striking ''section 5a of this Act'' and all that follows through ''5d of this Act'' and inserting ''section 5b of this Act''.

(2) Section 6(g)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(g)(1)(A)) is amended—

(A) by striking ''that—'' and all that follows through ''(i) has been designated'' and inserting ''that has been designated'';

(B) by striking ''; or'' and inserting ''; and'' and

(C) by striking clause (ii).

SEC. 732. DESIGNATED CONTRACT MARKETS.

(a) CRITERIA FOR DESIGNATION.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (b).

(b) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5 of the Commodity Exchange Act (7 U.S.C. 7) is amended by striking subsection (d) and inserting the following:

''(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

''(1) DESIGNATION AS BOARD OF TRADE.—

''(A) IN GENERAL.—To be designated, and maintain a designation, as a contract market, a board of trade shall comply with—

''(i) any core principle described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) REASONABLE DISCRETION OF BOARD OF TRADE.—Unless otherwise determined by the Commission by rule or regulation, a board of trade described in subparagraph (A) shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles described in this subsection.

''(2) COMPLIANCE WITH RULES.—

''(A) IN GENERAL.—The board of trade shall establish, monitor, and enforce compliance with the rules of the contract market, including—

''(i) access requirements;

''(ii) the terms and conditions of any contracts to be traded on the contract market; and

''(iii) rules prohibiting abusive trade practices on the contract market.

''(B) CAPACITY OF BOARD OF TRADE.—The board of trade shall have the capacity to detect, investigate, and apply appropriate sanctions to any person that violates any rule of the contract market.

''(C) REQUIREMENT OF RULES.—The rules of the contract market shall provide the board of trade with the ability and authority to obtain any necessary information to perform any function described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

''(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

''(4) PREVENTION OF MARKET DISRUPTION.—The board of trade shall have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process through market surveillance, compliance, and enforcement practices and procedures, including—

''(A) methods for conducting real-time monitoring of trading; and

''(B) comprehensive and accurate trade reconstructions.

''(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—

''(A) IN GENERAL.—To reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), the board of trade shall adopt for each contract of the board of trade, as is necessary and appropriate, position limitations or position accountability for speculators.

''(B) MAXIMUM ALLOWABLE POSITION LIMITATION.—For any contract that is subject to a position limitation established by the Commission pursuant to section 4a(a), the board

of trade shall set the position limitation of the board of trade at a level not higher than the position limitation established by the Commission.

''(6) EMERGENCY AUTHORITY.—The board of trade, in consultation or cooperation with the Commission, shall adopt rules to provide for the exercise of emergency authority, as is necessary and appropriate, including the authority—

''(A) to liquidate or transfer open positions in any contract;

''(B) to suspend or curtail trading in any contract; and

''(C) to require market participants in any contract to meet special margin requirements.

''(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public accurate information concerning—

''(A) the terms and conditions of the contracts of the contract market; and

''(B)(i) the rules, regulations, and mechanisms for executing transactions on or through the facilities of the contract market; and

''(ii) the rules and specifications describing the operation of the contract market's—

''(I) electronic matching platform; or

''(II) trade execution facility.

''(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

''(9) EXECUTION OF TRANSACTIONS.—

''(A) IN GENERAL.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions that protects the price discovery process of trading in the centralized market of the board of trade.

''(B) RULES.—The rules of the board of trade may authorize, for bona fide business purposes—

''(i) transfer trades or office trades;

''(ii) an exchange of—

''(I) futures in connection with a cash commodity transaction;

''(II) futures for cash commodities; or

''(III) futures for non-security-based swaps; or

''(iii) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

''(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information—

''(A) to assist in the prevention of customer and market abuses; and

''(B) to provide evidence of any violations of the rules of the contract market.

''(11) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce—

''(A) rules and procedures for ensuring the financial integrity of transactions entered into on or through the facilities of the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization); and

''(B) rules to ensure—

''(i) the financial integrity of any—

''(I) futures commission merchant; and

''(II) introducing broker; and

''(ii) the protection of customer funds.

''(12) PROTECTION OF MARKETS AND MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules—

''(A) to protect markets and market participants from abusive practices committed by any party, including abusive practices committed by a party acting as an agent for a participant; and

''(B) to promote fair and equitable trading on the contract market.

''(13) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

''(14) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding, and provide facilities for alternative dispute resolution as appropriate for, market participants and any market intermediaries.

''(15) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other person with direct access to the facility (including any party affiliated with any person described in this paragraph).

''(16) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules—

''(A) to minimize conflicts of interest in the decision-making process of the contract market; and

''(B) to establish a process for resolving conflicts of interest described in subparagraph (A).

''(17) COMPOSITION OF GOVERNING BOARDS OF CONTRACT MARKETS.—The governance arrangements of the board of trade shall be designed to promote the objectives of market participants.

''(18) RECORDKEEPING.—The board of trade shall maintain records of all activities relating to the business of the contract market—

''(A) in a form and manner that is acceptable to the Commission; and

''(B) for a period of at least 5 years.

''(19) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, the board of trade shall, to the maximum extent practicable, avoid—

''(A) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

''(B) imposing any material anticompetitive burden on trading on the contract market.

''(20) SYSTEM SAFEGUARDS.—The board of trade shall—

''(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity;

''(B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade; and

''(C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.

''(21) FINANCIAL RESOURCES.—

''(A) IN GENERAL.—The board of trade shall have adequate financial, operational, and managerial resources to discharge each responsibility of the board of trade.

''(B) DETERMINATION OF ADEQUACY.—The financial resources of the board of trade shall be considered to be adequate if the value of the financial resources exceeds the total amount that would enable the contract market to cover the operating costs of the contract market for a 1-year period, as calculated on a rolling basis.''.

SEC. 733. MARGIN.

Section 8a(7) of the Commodity Exchange Act (7 U.S.C. 12a(7)) is amended—

(1) in subparagraph (C), by striking '', excepting the setting of levels of margin'';

(2) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(3) by inserting after subparagraph (C) the following:

''(D) margin requirements, provided that the rules, regulations, or orders shall—

''(i) be limited to protecting the financial integrity of the derivatives clearing organization;

''(ii) be designed for risk management purposes to protect the financial integrity of transactions; and

''(iii) not set specific margin amounts;''.

SEC. 734. POSITION LIMITS ON NON-SECURITY-BASED SWAPS.

(a) AGGREGATE POSITION LIMITS.—Section 4a(a) of the Commodity Exchange Act (7 U.S.C. 6a(a)) is amended—

(1) by inserting after ''(a)'' the following: ''(1) IN GENERAL.—'';

(2) in the first sentence, by striking ''on electronic trading facilities with respect to a significant price discovery contract'' and inserting ''non-security-based swaps that perform or affect a significant price discovery function with respect to registered entities'';

(3) in the second sentence—

(A) by inserting '', including any group or class of traders,'' after ''held by any person''; and

(B) by striking ''on an electronic trading facility with respect to a significant price discovery contract,'' and inserting ''non-security-based swaps traded on or subject to the rules of a non-security-based swaps execution facility, or non-security-based swaps not traded on or subject to the rules of a non-security-based swaps execution facility that perform a significant price discovery function with respect to a registered entity,''; and

(4) by adding at the end the following:

''(2) AGGREGATE POSITION LIMITS.—The Commission may, by rule or regulation, establish limits (including related hedge exemption provisions) on the aggregate number or amount of positions in contracts based on the same underlying commodity (as defined by the Commission) that may be held by any person, including any group or class of traders, for each month across—

''(A) contracts listed by designated contract markets;

''(B) with respect to an agreement, contract, or transaction that settles against, or in relation to, any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, contracts traded on a foreign board of trade that provides members or other participants located in the United States with direct access to the electronic trading and order matching system of the foreign board of trade;

''(C) non-security-based swaps traded on or subject to the rules of a non-security-based swap execution facility; and

''(D) non-security-based swaps not traded on or subject to the rules of a non-security-based swap execution facility that perform or affect a significant price discovery function with respect to a registered entity.

''(3) SIGNIFICANT PRICE DISCOVERY FUNCTION.—In making a determination as to

whether a non-security-based swap performs or affects a significant price discovery function with respect to registered entities, the Commission shall consider, as appropriate, the following factors:

''(A) PRICE LINKAGE.—The extent to which the non-security-based swap uses or otherwise relies on a daily or final settlement price, or other major price parameter, of another contract traded on a registered entity based on the same underlying commodity, to value a position, transfer or convert a position, financially settle a position, or close out a position.

''(B) ARBITRAGE.—The extent to which the price for the non-security-based swap is sufficiently related to the price of another contract traded on a registered entity based on the same underlying commodity so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the non-security-based swaps on a frequent and recurring basis.

''(C) MATERIAL PRICE REFERENCE.—The extent to which, on a frequent and recurring basis, bids, offers, or transactions in a contract traded on a registered entity are directly based on, or are determined by referencing, the price generated by the swap.

''(D) MATERIAL LIQUIDITY.—The extent to which the volume of non-security-based swaps being traded in the commodity is sufficient to have a material effect on another contract traded on a registered entity.

''(E) OTHER MATERIAL FACTORS.—Such other material factors as the Commission specifies by rule or regulation as relevant to determine whether a non-security-based swap serves a significant price discovery function with respect to a regulated market.

''(4) EXEMPTIONS.—The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any non-security-based swap or class of non-security-based swaps, or any transaction or class of transactions from any requirement that the Commission establishes under this section with respect to position limits.''.

(b) CONFORMING AMENDMENTS.—Section 4a(b) of the Commodity Exchange Act (7 U.S.C. 6a(b)) is amended—

(1) in paragraph (1), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or non-security-based swap execution facility or facilities''; and

(2) in paragraph (2), by striking ''or derivatives transaction execution facility or facilities or electronic trading facility'' and inserting ''or non-security-based swap execution facility''.

SEC. 735. FOREIGN BOARDS OF TRADE.

(a) IN GENERAL.—Section 4(b) of the Commodity Exchange Act (7 U.S.C. 6(b)) is amended—

(1) in the first sentence, by striking ''The Commission'' and inserting the following:

''(2) PERSONS LOCATED IN THE UNITED STATES.—

''(3) IN GENERAL.—The Commission'';

(2) in the second sentence, by striking ''Such rules and regulations'' and inserting the following:

''(B) DIFFERENT REQUIREMENTS.—Rules and regulations described in subparagraph (A)'';

(3) in the third sentence—

(A) by striking ''No rule or regulation'' and inserting the following:

''(C) PROHIBITION.—Except as provided in paragraphs (1) and (2), no rule or regulation'';

(B) by striking ''that (1) requires'' and inserting the following: ''that—

''(i) requires''; and

(C) by striking ''market, or (2) governs'' and inserting the following: ''market; or

''(ii) governs''; and

(4) by inserting before paragraph (2) (as designated by paragraph (1)) the following:

''(1) FOREIGN BOARDS OF TRADE.—

''(A) IN GENERAL.—It shall be unlawful for a foreign board of trade to provide to the members of the foreign board of trade or other participants located in the United States direct access to the electronic trading and order-matching system of the foreign board of trade with respect to an agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, unless the Commission determines that—

''(i) the foreign board of trade makes public daily trading information regarding the agreement, contract, or transaction that is comparable to the daily trading information published by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(ii) the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade)—

''(I) adopts position limits (including related hedge exemption provisions) for the agreement, contract, or transaction that are comparable to the position limits (including related hedge exemption provisions) adopted by the registered entity for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles;

''(II) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process;

''(III) agrees to promptly notify the Commission, with regard to the agreement, contract, or transaction that settles against any price (including the daily or final settlement price) of 1 or more contracts listed for trading on a registered entity, of any change regarding—

''(aa) the information that the foreign board of trade will make publicly available;

''(bb) the position limits that the foreign board of trade or foreign futures authority will adopt and enforce;

''(cc) the position reductions required to prevent manipulation, excessive speculation as described in section 4a, price distortion, or disruption of delivery or the cash settlement process; and

''(dd) any other area of interest expressed by the Commission to the foreign board of trade or foreign futures authority;

''(IV) provides information to the Commission regarding large trader positions in the agreement, contract, or transaction that is comparable to the large trader position information collected by the Commission for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles; and

''(V) provides the Commission such information as is necessary to publish reports on aggregate trader positions for the agreement, contract, or transaction traded on the foreign board of trade that are comparable to such reports on aggregate trader positions for the 1 or more contracts against which the agreement, contract, or transaction traded on the foreign board of trade settles.

''(B) EXISTING FOREIGN BOARDS OF TRADE.—Subparagraph (A) shall not be effective with respect to any foreign board of trade to which, prior to the date of enactment of this paragraph, the Commission granted direct access permission until the date that is 180 days after that date of enactment.''.

(b) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by inserting ''or by subsection (e)'' after ''Unless exempted by the Commission pursuant to subsection (c)''; and

(2) by adding at the end the following:

''(e) LIABILITY OF REGISTERED PERSONS TRADING ON A FOREIGN BOARD OF TRADE.—A person registered with the Commission, or exempt from registration by the Commission, under this Act may not be found to have violated subsection (a) with respect to a transaction in, or in connection with, a contract of sale of a commodity for future delivery if the person has reason to believe that the transaction and the contract is made on or subject to the rules of a foreign board of trade that has complied with paragraphs (1) and (2) of subsection (b).''.

(c) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) (as amended by section 736) is amended by adding at the end the following:

''(6) CONTRACT ENFORCEMENT FOR FOREIGN FUTURES CONTRACTS.—A contract of sale of a commodity for future delivery traded or executed on or through the facilities of a board of trade, exchange, or market located outside the United States for purposes of section 4(a) shall not be void, voidable, or unenforceable, and a party to such a contract shall not be entitled to rescind or recover any payment made with respect to the contract, based on the failure of the foreign board of trade to comply with any provision of this Act.''.

SEC. 736. LEGAL CERTAINTY FOR NON-SECURITY-BASED SWAPS.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by striking paragraph (4) and inserting the following:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—

''(A) IN GENERAL.—No hybrid instrument sold to any investor shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, the hybrid instrument under this section or any other provision of Federal or State law, based solely on the failure of the hybrid instrument to comply with the terms or conditions of section 2(f) or regulations of the Commission.

''(B) NON-SECURITY-BASED SWAPS.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants shall be void, voidable, or unenforceable, and no party to an agreement, contract, or transaction shall be entitled to rescind, or recover any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, or transaction—

''(i) to meet the definition of a non-security-based swap under section 1a; or

''(ii) to be cleared in accordance with section 2(h)(1).

''(5) LEGAL CERTAINTY.—

''(A) EFFECT ON NON-SECURITY-BASED SWAPS.—Unless specifically reserved in the applicable bilateral trading agreement, neither the enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, nor any requirement under that Act or an amendment made by that Act, shall constitute a termination event, force majeure, illegality, increased

costs, regulatory change, or similar event under a bilateral trading agreement (including any related credit support arrangement) that would permit a party to terminate, renegotiate, modify, amend, or supplement 1 or more transactions under the bilateral trading agreement.

''(B) POSITION LIMITS.—Any position limit established under the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010 shall not apply to a position acquired in good faith prior to the effective date of any rule, regulation, or order under the Act that establishes the position limit; *provided*, however, that such positions shall be attributed to the trader if the trader's position is increased after the effective date of such position limit rule, regulation, or order.''.

SEC. 737. MULTILATERAL CLEARING ORGANIZATIONS.

Sections 408 and 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421, 4422) are repealed.

SEC. 738. ENFORCEMENT.

(a) CONFORMING AMENDMENTS.—

(1) Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended—

(A) in subsection (a)(2), by striking ''or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or non-security-based swap,'';

(B) in subsection (b), by striking ''or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 5a(g),'' and inserting ''or non-security-based swap,''; and

(C) by adding at the end the following:

''(e) It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any non-security-based swap, on a group or index of securities (or any interest therein or based on the value thereof) that is a broad-based security index—

''(1) to employ any device, scheme, or artifice to defraud;

''(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

''(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.''.

(2) Section 4c(a)(1) of the Commodity Exchange Act (7 U.S.C. 6c(a)(1)) is amended by inserting ''or non-security-based swap'' before ''if the transaction is used or may be used''.

(3) Section 6(c) of the Commodity Exchange Act (7 U.S.C. 9) is amended in the first sentence by inserting ''or of any non-security-based swap,'' before ''or has willfully made''.

(4) Section 6(d) of the Commodity Exchange Act (7 U.S.C. 13b) is amended in the first sentence, in the matter preceding the proviso, by inserting ''or of any non-security-based swap,'' before ''or otherwise is violating''.

(5) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) is amended in the matter preceding the proviso by inserting ''or any non-security-based swap'' after ''commodity for future delivery''.

(6) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended—

(A) in subsection (a)—

(i) in paragraph (2), by inserting ''or of any non-security-based swap,'' before ''or to corner''; and

(ii) in paragraph (4), by inserting ''registered non-security-based swap data repository,'' before ''or futures association'' and

(B) in subsection (e)(1)—

(i) by inserting ''registered non-security-based swap data repository,'' before ''or registered futures association''; and

(ii) by inserting '', or non-security-based swaps,'' before ''on the basis''.

(7) Section 9(a) of the Commodity Exchange Act (7 U.S.C. 13(a)) is amended by adding at the end the following:

''(6) Any person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.''.

(8) Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended by adding at the end the following:

''(11) SWAPS.—

''(A) IN GENERAL.—Subject to subparagraph (B), this section shall apply to any swap participant, derivatives clearing organization, registered non-security-based swap data repository, security-based swap data repository, or non-security-based swap execution facility regardless of whether the participant, organization, repository, or facility is an insured depository institution, for which the Board, the Corporation, or the Office of the Comptroller of the Currency is the appropriate Federal banking agency or prudential regulator for purposes of the amendments made by the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(B) LIMITATION.—The authority described in subparagraph (A) shall be limited by, and exercised in accordance with, section 4b–1 of the Commodity Exchange Act.''.

SEC. 739. RETAIL COMMODITY TRANSACTIONS.

(a) IN GENERAL.—Section 2(c) of the Commodity Exchange Act (7 U.S.C. 2(c)) is amended—

(1) in paragraph (1), by striking ''(to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B))'' and inserting '', 5b, or 12(e)(2)(B))''; and

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

''(D) RETAIL COMMODITY TRANSACTIONS.—

''(i) APPLICABILITY.—Except as provided in clause (ii), this subparagraph shall apply to any agreement, contract, or transaction in any commodity that is—

''(I) entered into with, or offered to (even if not entered into with), a person that is not an eligible contract participant or eligible commercial entity; and

''(II) entered into, or offered (even if not entered into), on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.

''(ii) EXCEPTIONS.—This subparagraph shall not apply to—

''(I) an agreement, contract, or transaction described in paragraph (1) or subparagraphs (A), (B), or (C), including any agreement, contract, or transaction specifically excluded from subparagraph (A), (B), or (C);

''(II) any security;

''(III) a contract of sale that—

''(aa) results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved; or

''(bb) creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer; or

''(IV) an agreement, contract, or transaction that is listed on a national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

''(iii) ENFORCEMENT.—Sections 4(a), 4(b), and 4b apply to any agreement, contract, or transaction described in clause (i), as if the agreement, contract, or transaction was a contract of sale of a commodity for future delivery.

''(iv) ELIGIBLE COMMERCIAL ENTITY.—For purposes of this subparagraph, an agricultural producer, packer, or handler shall be considered to be an eligible commercial entity for any agreement, contract, or transaction for a commodity in connection with the line of business of the agricultural producer, packer, or handler.

''(v) ACTUAL DELIVERY.—For purposes of clause (ii)(III), the term 'actual delivery' does not include delivery to a third party in a financed transaction in which the commodity is held as collateral.''.

(b) GRAMM-LEACH-BLILEY ACT.—Section 206 of the Gramm-Leach-Bliley Act (Public Law 106–102; 15 U.S.C. 78c note) is amended—

(1) in subsection (a), in the matter preceding paragraph (1), by striking ''For purposes of'' and inserting ''Except as provided in subsection (e), for purposes of''; and

(2) by adding at the end the following:

''(e) LIMITATION OF DEFINITION OF IDENTIFIED BANKING PRODUCT.—Except as provided in section 403 of the Legal Certainty for Bank Products Act of 2000 (7 U.S.C. 27a), for purposes of section 131 of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010, the term 'identified banking product' does not include a retail commodity transaction.''.

SEC. 740. OTHER AUTHORITY.

Unless otherwise provided by the amendments made by this subtitle, the amendments made by this subtitle do not divest any appropriate Federal banking agency, the Commodity Futures Trading Commission, the Securities and Exchange Commission, or other Federal or State agency of any authority derived from any other applicable law.

SEC. 741. ENHANCED COMPLIANCE BY REGISTERED ENTITIES.

(a) CORE PRINCIPLES FOR CONTRACT MARKETS.—Section 5(d) of the Commodity Exchange Act (7 U.S.C. 7(d)) (as amended by section 732(b)) is amended by striking paragraph (1) and inserting the following:

''(1) DESIGNATION.—

''(A) IN GENERAL.—To be designated as, and to maintain the designation of, a board of trade as a contract market, the board of trade shall comply with—

''(i) the core principles described in this subsection; and

''(ii) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(B) DISCRETION OF BOARD OF TRADE.—Unless the Commission determines otherwise by rule or regulation, the board of trade shall have reasonable discretion in establishing the manner by which the board of trade complies with each core principle.''.

(b) CORE PRINCIPLES.—Section 5b(c)(2) of the Commodity Exchange Act (7 U.S.C. 7a–1(c)(2)) (as amended by section 725(c)) is amended by striking subparagraph (A) and inserting the following:

''(A) REGISTRATION.—

''(i) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, a derivatives clearing organization shall comply with—

''(I) the core principles described in this paragraph; and

''(II) any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5).

''(ii) DISCRETION OF COMMISSION.—Unless the Commission determines otherwise by rule or regulation, a derivatives clearing organization shall have reasonable discretion in establishing the manner by which the derivatives clearing organization complies with each core principle.''.

(c) EFFECT OF INTERPRETATION.—Section 5c(a) of the Commodity Exchange Act (7 U.S.C. 7a–2(a)) is amended by striking paragraph (2) and inserting the following:

''(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) may provide the exclusive means for complying with each section described in paragraph (1).''.

SEC. 742. INSIDER TRADING.

Section 4c(a) of the Commodity Exchange Act (7 U.S.C. 6c(a)) is amended by adding at the end the following:

''(3) CONTRACT OF SALE.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any non-security-based swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to use the information in his personal capacity and for personal gain to enter into, or offer to enter into—

''(A) a contract of sale of a commodity for future delivery (or option on such a contract);

''(B) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(C) a non-security-based swap.

''(4) IMPARTING OF NONPUBLIC INFORMATION.—

''(A) IMPARTING OF NONPUBLIC INFORMATION.—It shall be unlawful for any employee or agent of any department or agency of the Federal Government who, by virtue of the employment or position of the employee or agent, acquires information that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any swap, and which information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, to impart the information in his personal capacity and for personal gain with intent to assist another person, directly or indirectly, to use the information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap; and

''(B) KNOWING USE.—It shall be unlawful for any person who receives information imparted by any employee or agent of any department or agency of the Federal Government as described in subparagraph (A) to knowingly use such information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap; and

''(C) THEFT OF NONPUBLIC INFORMATION.—It shall be unlawful for any person knowingly to steal, convert, or misappropriate acquire, by any means whatsoever, governmental information held or created by any department or agency of the Federal Government that may affect or tend to affect the price of any commodity in interstate commerce, or for future delivery, or any non-security-based swap, where such person knows, or in the exercise of reasonable care should know acts in reckless disregard of the fact, that such information has not been disseminated by the department or agency of the Federal Government holding or creating the information in a manner which makes it generally available to the trading public, or disclosed in a criminal, civil, or administrative hearing, or in a congressional, administrative, or Government Accountability Office report, hearing, audit, or investigation, and to use such information, or to impart such information with the intent to assist another person, directly or indirectly, to use such information to enter into, or offer to enter into—

''(i) a contract of sale of a commodity for future delivery (or option on such a contract);

''(ii) an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)); or

''(iii) a non-security-based swap.

Provided, however, that nothing in this subparagraph shall preclude a person that has provided information concerning, or generated by, the person, its operations or activities, to any employee or agent of any department or agency of the Federal Government, voluntarily or as required by law, from using such information to enter into, or offer to enter into, a contract of sale, option, or non-security-based swap described in clauses (i), (ii), or (iii).''.

SEC. 743. CONFORMING AMENDMENTS.

(a) Section 2(c)(1) of the Commodity Exchange Act (7 U.S.C. 2(c)(1)) is amended, in the matter preceding subparagraph (A), by striking ''5a (to the extent provided in section 5a(g)),''.

(b) Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) (as amended by section 724) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) by striking ''engage as'' and inserting ''be a''; and

(ii) by striking ''or introducing broker'' and all that follows through ''or derivatives transaction execution facility'';

(B) in paragraph (1), by striking ''or introducing broker''; and

(C) in paragraph (2), by striking ''if a futures commission merchant,''; and

(2) by adding at the end the following:

''(g) It shall be unlawful for any person to be an introducing broker unless such person shall have registered under this Act with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.''.

(c) Section 5c of the Commodity Exchange Act (7 U.S.C. 7a–2) is amended—

(1) in subsection (a)(1)—

(A) by striking '', 5a(d),''; and

(B) by striking ''and section (2)(h)(7) with respect to significant price discovery contracts,''; and

(2) in subsection (f)(1), by striking ''section 4d(c) of this Act'' and inserting ''section 4d(e)''.

(d) Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) is amended by striking ''or revocation of the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,''.

(e) Section 6(b) of the Commodity Exchange Act (7 U.S.C. 8(b)) is amended in the first sentence by striking '', or to revoke the right of an electronic trading facility to rely on the exemption set forth in section 2(h)(3) with respect to a significant price discovery contract,''.

(f) Section 12(e)(2)(B) of the Commodity Exchange Act (7 U.S.C. 16(e)(2)(B)) is amended—

(1) by striking ''section 2(c), 2(d), 2(f), or 2(g) of this Act'' and inserting ''section 2(c), 2(f), or 2(i) of this Act''; and

(2) by striking ''2(h) or''.

(g) Section 17(r)(1) of the Commodity Exchange Act (7 U.S.C. 21(r)(1)) is amended by striking ''section 4d(c) of this Act'' and inserting ''section 4d(e)''.

(h) Section 22(b)(1)(A) of the Commodity Exchange Act (7 U.S.C. 25(b)(1)(A)) is amended by striking ''section 2(h)(7) or''.

(i) Section 408(2)(C) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4421(2)(C)) is amended—

(1) by striking ''section 2(c), 2(d), 2(f), or (2)(g) of such Act'' and inserting ''section 2(c), 2(f), or 2(i) of that Act''; and

(2) by striking ''2(h) or''.

Subtitle C—Regulation of Security-Based Swap Markets

SEC. 761. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (13), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(2) in paragraph (14), by adding at the end the following: ''For security-based swaps, such terms include the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap, as the context may require.'';

(3) in paragraph (39)—

(A) in subparagraph (B)(i)(I), by striking ''or government securities dealer'' and inserting ''government securities dealer, or swap participant'';

(B) in subparagraph (B)(i)(II), by inserting ''swap participant,'' after ''government securities dealer,'';

(C) in subparagraph (C), by striking ''or government securities dealer'' and inserting ''government securities dealer, or swap participant''; and

(D) in subparagraph (D), by inserting ''swap participant,'' after ''government securities dealer,''; and

(4) by adding at the end the following:

''(65) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(66) SWAP PARTICIPANT.—The term 'swap participant' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(67) SECURITY-BASED SWAP.—The term 'security-based swap' means—

''(A) an instrument that is not a security; and

''(B) a swap, of which 1 or more material terms—

''(i) is based on the price, yield, value, or volatility of—

''(I) any single security, any narrow-based group or narrow-based index of securities, or any interest therein; or

''(II) any single loan, any narrow-based group or narrow-based index of loans, or any interest therein;

''(ii) is dependent on the occurrence, nonoccurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence that is related to or based on—

''(I) a single security, an interest in a security, an issuer of a security, or narrow-based group or narrow-based index of securities, or interests in securities or issuers of securities; or

''(II) a single loan, an interest in a loan, a recipient of a loan, or narrow-based group or narrow-based index of loans, or interests in loans or recipients of loans;

''(iii) provides for the purchase or sale of no more than 9 securities or loans on a contingent basis, whether physically or cash settled, if such agreement, contract, or transaction predicates such purchase or sale (or a net cash payment in lieu thereof) on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of 1 or more reference entities; or

''(iv) allows for payment, settlement, termination, fulfillment, or extinguishment of the swap or delivery on the swap, by means of the transfer or receipt of no more than 9 securities or loans, including any narrow-based group or narrow-based index of securities or loans.

''(68) CLEARED SWAP.—The term 'cleared swap' means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commodity Futures Trading Commission or a clearing agency registered with the Commission.

''(69) SWAP.—The term 'swap' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(70) ASSOCIATED PERSON OF A SWAP PARTICIPANT.—

''(A) IN GENERAL.—The term 'associated person of a swap participant' means—

''(i) any partner, officer, director, or branch manager of a swap participant (including any individual who holds a similar status or performs a similar function with respect to any partner, officer, director, or branch manager of a swap participant);

''(ii) any person that directly or indirectly controls, is controlled by, or is under common control with, a swap participant; and

''(iii) any employee of a swap participant.

''(B) EXCLUSION.—The term 'associated person of a swap participant' does not include any person associated with a swap participant the functions of which are solely clerical or ministerial.

''(71) 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)).

''(72) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(73) PRUDENTIAL REGULATOR.—The term 'prudential regulator' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(74) SECURITY-BASED SWAP DATA REPOSITORY.—The term 'security-based swap data repository' means any person that collects, calculates, prepares, or maintains information or records with respect to transactions or positions in, or the terms and conditions of, security-based swaps entered into by third parties.

''(75) SWAP END USER.—The term 'swap end user' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).

''(76) BROAD-BASED SECURITY INDEX.—The term 'broad-based security index' has the same meaning as in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).''.

(b) DEFINITIONS UNDER THE SECURITIES ACT OF 1933.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(1) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or which it references, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.''; and

(2) by adding at the end the following:

''(17) The terms 'security-based swap', and 'swap', have the same meanings as in paragraphs (67) and (69), respectively, of section 3(a) of the Securities Exchange Act of 1934.

''(18) The terms 'purchase' or 'sale' of a security-based swap, shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, novation, or similar transfer or conveyance of, or extinguishment (prior to its scheduled extinguishment date) of material rights or obligations under, a security-based swap, as the context may require.''.

SEC. 762. REPEAL OF PROHIBITION ON REGULATION OF SWAPS.

(a) REPEAL OF LAW.—The following provisions of law are repealed:

(1) Sections 206A, 206B, and 206C of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note).

(2) Section 2A of the Securities Act of 1933 (15 U.S.C. 77b–1).

(3) Section 17(d) of the Securities Act of 1933 (15 U.S.C. 77q(d)).

(4) Section 3A of the Securities Exchange Act of 1934 (15 U.S.C. 78c–1).

(5) Section 9(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(i)).

(6) Section 15(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(i)), as added by section 303(f) of the Commodity Futures Modernization Act of 2000 (Public Law 106–554; 114 Stat. 2763A–455).

(7) Section 16(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(g)).

(8) Section 20(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(f)).

(9) Section 21A(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(g)).

(b) CONFORMING AMENDMENT TO THE SECURITIES ACT OF 1933.—Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) is amended by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' and inserting ''(as defined in section 3(a)(67) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(67))''.

(c) CONFORMING AND OTHER AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9(a) (15 U.S.C. 78i(a)), by striking paragraphs (2) through (5) and inserting the following:

''(2) To effect, alone or with 1 or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any swap with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

''(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security to induce the purchase or sale of any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.

''(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security, for the purpose of inducing the purchase or sale of such security or such swap, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

''(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase of any security registered on a national securities exchange, any security not so registered, or any swap with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any 1 or more persons conducted for the purpose of raising or depressing the price of such security.'';

(2) in section 10 (15 U.S.C. 78j)—

(A) by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(B) by striking ''agreements (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(3) in section 15(c) (15 U.S.C. 78o(c)), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that term appears;

(4) in section 16 (15 U.S.C. 78p)—

(A) in subsection (a)(2)(C), by striking ''agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act)'';

(B) in subsection (a)(3)(B), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(C) in subsection (b), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)'' each place that the term appears;

(5) in section 20(d) (15 U.S.C. 78t(d)), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''; and

(6) in section 21A(a)(1) (15 U.S.C. 78u–1), by striking ''agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

SEC. 763. CLEARING.

(a) REGISTERED CLEARING AGENCIES.—Section 17A(b)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) is amended by adding at the end the following:

''(J) The Commission shall require clearing agencies to provide information collected related to the clearing of security-based swaps by such agencies to any of the following regulatory authorities that requests such information:

''(i) The Board.

''(ii) The Commodity Futures Trading Commission.

''(iii) Each appropriate prudential regulator.

''(iv) The Financial Stability Oversight Council.

''(v) The Department of Justice.

''(vi) Any other person that the Commission determines to be appropriate, including—

''(I) foreign financial supervisors (including foreign futures authorities);

''(II) foreign central banks; and

''(III) foreign ministries.

''(K) A person that is required to be registered as a clearing agency under this section shall register with the Commission regardless of whether the person is also licensed as a bank or a derivatives clearing organization registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 7a–1).''.

(b) REQUIRED CLEARING.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 17C, as added by this subtitle, the following:

''SEC. 17D. CLEARING OF SECURITY-BASED SWAP TRANSACTIONS.

''(a) CLEARING REQUIREMENT.—

''(1) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—In accordance with paragraph (2), the Commission shall, jointly with the Commodity Futures Trading Commission and the Board, adopt rules to establish criteria for determining that a swap, or any group, category, type, or class of swap is required to be cleared.

''(2) FACTORS.—In carrying out paragraph (1), the following factors shall be considered—

''(A) whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or the group, category, type, or class of swap for clearing;

''(B) whether the swap or the group, category, type, or class of swap is traded pursuant to standard documentation and terms;

''(C) the liquidity of the swap or the group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof;

''(D) the ability to value the swap or the group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices;

''(E) the size of the market for the swap or the group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing;

''(F) whether a clearing mandate would mitigate risk to the financial system or whether such a mandate would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency; and

''(G) such other factors as the Commission, the Commodity Futures Trading Commission, and the Board may jointly determine are relevant.

''(3) SECURITY-BASED SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

''(A) shall review each security-based swap, or any group, category, type, or class of security-based swap that is currently listed for clearing and those which a clearing agency notifies the Commission that the clearing agency plans to list for clearing after the date of enactment of this subsection;

''(B) may require, pursuant to the rules adopted under paragraph (1) and through notice-and-comment rulemaking, that a particular security-based swap or any group, category, type, or class of security-based swap must be cleared if—

''(i) both counterparties are swap participants;

''(ii) the transaction was entered into on or before the later of—

''(I) the date of publication of the requirement in the Federal Register; or

''(II) the effective date of the requirement; and

''(iii) one of the counterparties directly or indirectly controls, is controlled by, or is under common control with the other counterparty to the transaction, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by rule or order, that transactions between certain parties under common control are subject to any requirement to clear under this clause; and

''(C) shall rely on economic analysis provided by economists of the Commission in making any determination under subparagraph (B), which economic analysis may refer to any peer-reviewed or other relevant literature conducted by independent researchers.

''(4) EFFECT.—

''(A) Nothing in this subsection affects the ability of a clearing agency to list for permissive clearing any security-based swap, or group, category, type, or class of security-based swap.

''(B) The Commission shall not compel a clearing agency to list a security-based swap or any group, category, type, or class of security-based swap for clearing if the clearing agency determines that the security-based swap or the group, category, type, or class of security-based swap would—

''(i) adversely impact the business operations of the clearing agency;

''(ii) impair the financial integrity of the clearing agency; or

''(iii) pose a threat to the financial stability of the United States.

''(5) PREVENTION OF EVASION.—

''(A) IN GENERAL.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under paragraph (3).

''(B) CONSIDERATIONS.—In issuing rules or interpretations under subparagraph (A), the Commission shall consider—

''(i) the extent to which the terms of the security-based swap or any group, category, type, or class of security-based swap are similar to the terms of other security-based swaps or other groups, categories, types, or classes of security-based swaps that are required to be cleared by swap participants under paragraph (3); and

''(ii) whether there is an economic purpose for any differences in the terms of the security-based swap or group, category, type, or class of security-based swap that are required to be cleared by swap participants under paragraph (3).

''(6) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under paragraph (1) and through notice-and-comment rulemaking, rescind a requirement imposed under paragraph (3) with respect to a security-based swap or any group, category, type, or class of security-based swap.

''(7) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission—

''(A) use the authority granted to the Commission under paragraph (3) to require swap participants to clear a particular security-based swap or any group, category, type, or class of security-based swap; or

''(B) use the authority granted to the Commission under paragraph (6) to rescind a requirement for swap participants to clear a particular security-based swap or any group, category, type, or class of security-based swap.

''(8) OPTION TO CLEAR FOR COUNTERPARTIES THAT ARE NOT SWAP PARTICIPANTS.—Before entering into a security-based swap transaction, any counterparty that is not a swap participant may elect to clear a security-based swap that is subject to a clearing requirement under paragraph (3). If such counterparty elects to clear, it shall have the sole right to select the derivatives clearing organization or clearing agency at which the security-based swap will be cleared.

''(b) SEGREGATION REQUIREMENTS FOR CLEARED SECURITY-BASED SWAPS.—

''(1) IN GENERAL.—

''(A) SEGREGATION REQUIRED.—A swap participant shall treat and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a security-based swap cleared by or through a clearing agency (including money, securities, or property accruing to the swap customer as the result of such a swap) as belonging to the swap customer.

''(B) COMMINGLING PROHIBITED.—Money, securities, and property of a swap customer described in subparagraph (A)—

''(i) shall be separately accounted for; and

''(ii) shall not be—

''(I) commingled with the funds of the swap participant; or

''(II) used to margin, secure, or guarantee any trades or contracts of any swap customer or person other than the person for whom the same are held.

''(2) EXCEPTIONS.—

''(A) USE OF FUNDS.—

''(i) IN GENERAL.—Notwithstanding paragraph (1), money, securities, and property of a swap customer of a swap participant described in paragraph (1) may, for convenience, be commingled and deposited in the same 1 or more accounts with any bank or trust company or with a clearing agency.

''(ii) WITHDRAWAL.—Notwithstanding paragraph (1), such share of the money, securities, and property described in clause (i) as in the normal course of business shall be necessary to margin, guarantee, secure, transfer, adjust, or settle a cleared swap with a clearing agency, or with any member of the clearing agency, may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage, and other charges, lawfully accruing in connection with the cleared swap.

''(B) COMMISSION ACTION.—Notwithstanding paragraph (1), in accordance with such terms and conditions as the Commission may prescribe by rule, regulation, or order, any money, securities, or property of the swap customer of a swap participant described in paragraph (1) may be commingled and deposited as provided in this subsection with any other money, securities, or property received by the swap participant and required by the Commission to be separately accounted for and treated and dealt with as belonging to the swap customer.

''(3) PERMITTED INVESTMENTS.—Money described in paragraph (1) may be invested in obligations of the United States or in any other investment that has minimal credit, market, and liquidity risks that the Commission may by rule or regulation prescribe, and such investments shall be made in accordance with such rules and regulations and subject to such conditions as the Commission may prescribe.

''(4) PROHIBITION.—It shall be unlawful for any person, including any clearing agency and any depository institution, that has received any money, securities, or property for deposit in a separate account or accounts as provided in paragraph (1) to hold, dispose of,

or use any such money, securities, or property as belonging to the depositing swap participant or any person other than the swap customer of the swap participant.''.

SEC. 764. TRANSPARENCY OF SECURITY-BASED SWAP TRANSACTION DATA.

(a) PURPOSES.—The Securities and Exchange Commission is directed, consistent with the purposes of this subtitle, to use the authorities granted to it under this title, and the amendments made by this subtitle, to facilitate the prompt and accurate collection, calculation, processing or preparation, and public dissemination of information on transactions and positions in security-based swaps.

(b) NATIONAL TRADE REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.—The Securities Exchange Act of 1934 is amended by inserting after section 17B (15 U.S.C. 78q–2) the following:

''SEC. 17C. NATIONAL TRADE REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.

''(a) MANDATORY REPORTING OF SECURITY-BASED SWAP TRANSACTIONS.—

''(1) IN GENERAL.—

''(A) TRANSACTIONS IN SECURITY-BASED SWAPS.—Any person that enters into or effects a transaction in a security-based swap shall report such transaction through a clearing agency or a security-based swap data repository registered with the Commission within the period specified by any rule or regulation adopted by the Commission under this paragraph.

''(B) UNCLEARED SECURITY-BASED SWAPS.—If no registered security-based swap data repository accepts an uncleared security-based swap, the person shall report the transaction to the Commission pursuant to the requirements that the Commission may by rule or regulation prescribe.

''(C) MANDATORY DISCLOSURES.—Each transaction report required under subparagraph (A) shall disclose whether the transaction is a bona fide hedging swap transaction, as that term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a), and any other information that the Commission has, by rule or regulation, prescribed as necessary or appropriate in furtherance of the purposes of this section.

''(2) PERMISSIBLE REPORTING FOR A COUNTERPARTY THAT IS NOT A SECURITY-BASED SWAP PARTICIPANT.—A swap participant may report a transaction in accordance with this section on behalf of its counterparty to that transaction provided that counterparty is not a swap participant.

''(3) RULEMAKING REQUIRED.—Not later than 180 days after the date of enactment of this section, the Commission shall by rule or regulation establish a schedule for the reporting through a clearing agency or registered security-based swap data repository or to the Commission of each security-based swap transaction or group, category, type, or class of security-based swap transactions entered into—

''(A) before the effective date of the Commission's rule or regulation and still outstanding as of such effective date; and

''(B) on or after the effective date of the Commission's rule or regulation.

''(b) CONFIDENTIALITY OF INFORMATION PROVIDED.—No non-public information provided to or obtained by the Commission under this section may be disclosed to any other person. Nothing in this subsection shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or foreign government with which the Commission has an information sharing arrangement that requests the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(c) PUBLIC DISSEMINATION OF CERTAIN INFORMATION PROVIDED.—

''(1) IN GENERAL.—

''(A) PRICES AND VOLUMES.—Notwithstanding subsection (b), the Commission is directed to use the authority granted to the Commission under this title to facilitate the public dissemination of prices and volumes of completed security-based swap transactions to provide investors and other market participants with information about recently executed transactions for the purposes of helping such investors and participants to—

''(i) mark existing security-based swap positions to market;

''(ii) make informed decisions before executing future transactions; and

''(iii) assess the quality of transactions that such investors and participants have executed.

''(B) RULEMAKING.—For each security-based swap or group, category, type, or class of security-based swap, the Commission shall determine by rule the extent to which individual or aggregated transaction data shall be disseminated and the timeliness of such disseminations.

''(2) RELIANCE ON ECONOMIC ANALYSIS.—

''(A) IN GENERAL.—In making determinations under this subsection, the Commission shall rely on economic analyses provided by the Chief Economist of the Commission and independent researchers that empirically evaluate the effects of increasing price transparency on measures of efficiency, competition, and market quality, including transaction costs and liquidity.

''(B) PILOT PROGRAMS.—To facilitate the empirical analyses under subparagraph (A), the Commission may design pilot programs that increase price transparency on selected security-based swaps.

''(3) CHIEF ECONOMIST REPORT.—

''(A) IN GENERAL.—Whenever the Commission publishes a release giving notice of a proposed rulemaking under this subsection, and affords interested persons an opportunity to comment on such proposed rulemaking or publishes a release adopting a final rule, such release shall include as a part thereof a report by the Chief Economist of the Commission.

''(B) REQUIRED INCLUSIONS.—Each report required under subparagraph (A) shall—

''(i) describe the economic analysis of the expected consequences of the proposed or final Commission action;

''(ii) refer to any peer-reviewed or other literature, including any empirical study undertaken by the staff of the Commission, that is relevant to the analysis contained in the report; and

''(iii) describe the extent to which the conclusions of the report remain subject to uncertainty.

''(4) PROTECTION OF PROPRIETARY INFORMATION.—

''(A) CONSIDERATIONS.—In making determinations under this subsection, the Commission shall consider whether public dissemination of individual or aggregate transaction data could result in the dissemination of proprietary information about the swap transactions, positions, trading strategies, or the ability of particular market participants to conduct effective hedging or risk management.

''(B) REQUIRED RULES.—Any rules adopted by the Commission under this subsection shall include protections to ensure that the public dissemination of security-based swap transaction data does not result in the disclosure of the proprietary information described in subparagraph (A).

''(5) REGISTERED ENTITIES AND PUBLIC REPORTING.—The Commission may require clearing agencies and registered security-based swap data repositories to publicly disseminate the security-based swap transaction and pricing data required to be reported under this subsection.

''(6) QUARTERLY PUBLIC REPORTING OF AGGREGATE SECURITY-BASED SWAP DATA.—

''(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall issue a written report on a quarterly basis to make available to the public information relating to—

''(i) the trading and clearing in the major security-based swap categories; and

''(ii) the market participants and developments in new products.

''(B) USE; CONSULTATION.—In preparing a report under subparagraph (A), the Commission shall—

''(i) use any information reported directly to the Commission and information from registered security-based swap data repositories and clearing agencies; and

''(ii) consult with the Office of the Comptroller of the Currency, the Bank for International Settlements, and such other regulatory bodies as may be necessary.

''(d) REGISTRATION.—

''(1) IN GENERAL.—A security-based swap data repository may register by filing with the Commission an application in such form as the Commission, by rule or regulation, shall prescribe containing such information as the Commission, by rule or regulation, may prescribe as necessary or appropriate in furtherance of the purposes of this section.

''(2) INSPECTION AND EXAMINATION.—Each registered security-based swap data repository shall be subject to inspection and examination by any representative of the Commission.

''(3) SHARING OF INFORMATION.—The Commission shall require each registered security-based swap data repository to provide information collected related to its functions as a security-based swap data repository to any of the following regulatory authorities that requests such information:

''(A) The Board.

''(B) The Commodity Futures Trading Commission.

''(C) Each appropriate prudential regulator.

''(D) The Financial Stability Oversight Council.

''(E) The Department of Justice.

''(F) Any other person that the Commission determines to be appropriate, including—

''(i) foreign financial supervisors (including foreign futures authorities);

''(ii) foreign central banks; and

''(iii) foreign ministries.

''(e) STANDARD SETTING.—

''(1) DATA IDENTIFICATION.—The Commission shall prescribe standards that specify the data elements for each security-based swap, including whether the transaction is a bona fide hedging swap transaction as defined in section 1a of the Commodity Exchange Act (7 U.S.C. la), that shall be collected and maintained by each registered security-based swap data repository.

''(2) DATA COLLECTION AND MAINTENANCE.—The Commission shall prescribe data collection and data maintenance standards for security-based swap data repositories.

''(3) COMPARABILITY.—The standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on clearing agencies in connection with such agencies' clearing of security-based swaps.

''(f) DUTIES.—A registered security-based swap data repository shall—

''(1) accept data prescribed by the Commission for 1 or more security-based swap under subsection (b);

''(2) confirm with both counterparties to the security-based swap the accuracy of the data that was submitted;

''(3) maintain the data described in paragraph (1) in such form, in such manner, and for such period as may be required by the Commission;

''(4)(A) provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity); and

''(B) provide the information described in paragraph (1) in such form and at such frequency as the Commission may require to comply with the public reporting requirements under subsection (c)(6);

''(5) at the direction of the Commission, establish automated systems for monitoring, screening, and analyzing security-based swap data; and

''(6) maintain the confidentiality of security-based swap transaction information that the registered security-based swap data repository receives from a counterparty, swap participant, or any other registered entity in accordance with the requirements that the Commission shall jointly with the Commodity Futures Trading Commission prescribe through notice-and-comment rulemaking.

''(g) REGULATORY REQUIREMENTS APPLICABLE TO REGISTERED SECURITY-BASED SWAP DATA REPOSITORIES.—The Commission shall adopt rules, by notice-and-comment rulemaking, for security-based swap data repositories that address the following:

''(1) ANTITRUST CONSIDERATIONS.—Unless specifically reviewed and approved by the Commission for antitrust purposes, a registered security-based swap data repository may not—

''(A) adopt any rule or take any action that results in any unreasonable restraint of trade; or

''(B) impose any material anticompetitive burden on the trading, clearing, or reporting of transactions.

''(2) GOVERNANCE ARRANGEMENTS.—Each registered security-based swap data repository shall establish governance arrangements—

''(A) that are transparent; and

''(B) that assure fair representation of the participants of the repository in reasonable proportion to the use of the repository by such participants in the selection of the directors of the repository and the administration of the affairs of the repository.

''(3) CONFLICTS OF INTEREST.—Each registered security-based swap data repository shall—

''(A) establish and enforce rules to minimize conflicts of interest in the decision-making process of the security-based swap data repository; and

''(B) establish a process for resolving conflicts of interest described in subparagraph (A).

''(4) NON-DISCRIMINATORY ACCESS.—A registered security-based swap data repository—

''(A) may not mandate directly or indirectly the substantive terms and conditions of transactions reported to the repository;

''(B) shall provide for the equitable allocation of reasonable dues, fees, and other charges among the participants of the repository and shall not impose any schedule of prices, or fix rates or other fees, for services rendered by such participants;

''(C) shall provide for participation in the repository by any swap participant and any other person or class of persons as the Commission, by rule or regulation, may determine to be necessary or appropriate in furtherance of the purposes of this section; and

''(D) shall not unfairly discriminate in the admission of participants or among participants in the use of the repository.''.

SEC. 765. REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.

Section 17 of the Securities Exchange Act of 1934 (15 U.S.C. 78q) is amended by adding at the end the following:

''(l) REGISTRATION AND REGULATION OF SWAP PARTICIPANTS.—

''(1) REGISTRATION.—Swap participants shall register with the Commission.

''(2) NOTICE REGISTRATION.—A swap participant shall be exempt from registration with the Commission if such participant files a notice registration with the Commission in the form and manner that the Commission shall prescribe, jointly with the Commodity Futures Trading Commission, by notice-and-comment rulemaking and—

''(A) such participant is exempt pursuant to a rule or order issued by the Commission, jointly with the Commodity Futures Trading Commission, to exempt swap participants that engage primarily in non-security-based swap transactions and are registered as swap participants with the Commodity Futures Trading Commission; or

''(B) all of its outstanding swap transactions are cleared swaps.

''(3) REQUIREMENTS.—

''(A) IN GENERAL.—A person shall register as a swap participant by filing a registration application with the Commission.

''(B) CONTENTS.—

''(i) IN GENERAL.—An application for registration under this subsection shall be made in such form and manner and contain such information as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, shall prescribe concerning the swap activities of the swap participant.

''(ii) CONTINUAL REPORTING.—A registered swap participant shall continue to submit to the Commission reports that contain such information pertaining to the swap activities of the swap participant as the Commission may require.

''(C) TRANSITION.—Rules under this section shall provide for the registration of swap participants not later than the date that is 1 year after the date of enactment of the Over-the-Counter Swaps Markets Transparency and Accountability Act of 2010.

''(D) STATUTORY DISQUALIFICATION.—Except to the extent otherwise specifically provided by rule, regulation, or order, it shall be unlawful for a swap participant to permit any person associated with a swap participant who is subject to a statutory disqualification to effect or be involved in effecting swaps on behalf of the swap participant, if the swap participant knew, or in the exercise of reasonable care should have known, of the statutory disqualification.

''(m) CAPITAL AND MARGIN REQUIREMENTS.—

''(1) CAPITAL REQUIREMENTS FOR PRUDENTIALLY REGULATED SWAP PARTICIPANTS.—Each swap participant for which there is a prudential regulator shall meet such minimum capital requirements as such prudential regulator shall prescribe pursuant to the authority of the prudential regulator.

''(2) MARGIN REQUIREMENTS FOR SWAP PARTICIPANTS FOR UNCLEARED SECURITY-BASED SWAPS.—

''(A) IN GENERAL.—Except as provided in paragraph (C), the Commission shall prescribe by rule or regulation the minimum margin requirements that apply to transactions between swap participants in any particular uncleared security-based swap or any group, category, type, or class of security-based swap, as the Commission deems appropriate for the risk of that particular uncleared security-based swap or class, group, category, type of security-based swap, for the purposes of—

''(i) reducing the risk of losses to counterparties; and

''(ii) preserving the financial integrity of markets trading security-based swaps.

''(B) CONSIDERATIONS.—The Commission shall not issue rules under this subsection unless the Commission determines that such rules—

''(i) would not inappropriately encourage or discourage the clearing of certain security-based swaps, resulting in an undue increase in risk to the financial system;

''(ii) are supported by economic analysis provided by the Chief Economist of the Commission; and

''(iii) would not impose any unnecessary burden on competition.

''(C) OUTSTANDING SECURITY-BASED SWAP POSITIONS.—The Commission and the Commodity Futures Trading Commission may by joint notice-and-comment rulemaking or order exempt any security-based swap, group, category, type, or class of security-based swap entered into on or before the date of enactment of this Act. In determining whether an exemption is appropriate, the Commission and the Commodity Futures Trading Commission shall take into account the notional value, the tenor, and the risk to the financial stability of the United States posed by the underlying security-based swap, group, category, type, or class of security-based swap.

''(D) AFFILIATE TRANSACTIONS.—The Commission shall not impose minimum margin requirements on security-based swap transactions in which one counterparty directly or indirectly controls, is controlled by, or is under common control with the other counterparty, provided, however, that the Commission, jointly with the Financial Stability Oversight Council, may determine, by notice-and-comment rulemaking, that transactions between certain parties under common control are subject to the minimum margin requirements imposed by the Commission under this clause.

''(3) SPECIAL MARGIN REQUIREMENTS FOR UNCLEARED SECURITY-BASED SWAP TRANSACTIONS INVOLVING A SWAP PARTICIPANT WITH A SUBSTANTIAL NET UNCOLLATERALIZED SECURITY-BASED SWAP POSITION.—If a swap participant has a substantial net uncollateralized swap position, any subsequent swap transaction, regardless of whether the swap participant's counterparty is a swap participant, shall be subject to—

''(A) any applicable clearing requirement under section 17D(a); and

''(B) any applicable margin requirements that the Commission has prescribed under paragraph (2).

''(4) SUBSTANTIAL NET UNCOLLATERALIZED POSITION.—

''(A) IN GENERAL.—From time to time, the Financial Stability Oversight Council shall define, by rule or regulation, the term 'substantial net uncollateralized position' by identifying the level of uncollateralized positions in swaps that a swap participant can hold without posing a threat to the financial system stability of the United States.

''(B) RELIANCE ON ECONOMIC ANALYSIS.—In making determinations under this subsection, the Commission and the Board shall rely on economic analysis provided by economists of the Commission and economists of the Board.

''(n) REPORTING AND RECORDKEEPING.—With respect to its swap business, each swap participant registered with the Commission—

''(1) shall make such reports as are required by the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking;

''(2)(A) for which there is a prudential regulator, shall keep books and records in such form and manner and for such period as may be prescribed by the prudential regulator; and

''(B) for which there is no prudential regulator, shall keep books and records in such form and manner and for such period as is be prescribed by the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking; and

''(3) shall keep books and records described in paragraph (2)(B) open to inspection and examination by any representative of the Commission.

''(o) BUSINESS CONDUCT STANDARDS AND REQUIREMENTS.—With respect to its swap business, each swap participant—

''(1) for which there is a prudential regulator, shall comply with such business conduct standards and requirements as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall comply with such business conduct standards and requirements as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, shall prescribe. The business conduct requirements prescribed under this paragraph shall—

''(A) establish the standard of care required for a swap participant to verify that any counterparty meets the eligibility standards for an eligible contract participant; and

''(B) require disclosure by the swap participant to any counterparty to the swap (other than a counterparty that is a swap participant) of—

''(i) information about the material risks and characteristics of the security-based swap; and

''(ii) any material conflicts of interest that the swap participant may have in connection with the security-based swap.

''(p) DOCUMENTATION AND BACK OFFICE STANDARDS.—Each swap participant registered with the Commission—

''(1) for which there is a prudential regulator, shall comply with such documentation and back office standards as the prudential regulator may impose; and

''(2) for which there is no prudential regulator, shall conform with such standards as the Commission, jointly with the Commodity Futures Trading Commission through notice-and-comment rulemaking, may prescribe that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.

''(q) CONFIDENTIALITY.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Commission may not be compelled to disclose any information required by Commission rule or regulation to be reported to the Commission under this subsection, except that nothing in this paragraph authorizes the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency requesting information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission.

''(2) RULE OF CONSTRUCTION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

''(r) SEGREGATION REQUIREMENTS FOR INITIAL MARGIN.—

''(1) SEGREGATION OF INITIAL MARGIN.—

''(A) NOTIFICATION OF RIGHT TO SEGREGATE INITIAL MARGIN.—A swap participant shall notify its counterparty before entering into a security-based swap transaction of the right of the counterparty to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty.

''(B) SEGREGATION AND MAINTENANCE OF INITIAL MARGIN.—At the request, made before entering into a security-based swap transaction, of a counterparty that provides funds or other property as initial margin to a swap participant for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall—

''(i) segregate the funds or other property for the benefit of the counterparty; and

''(ii) in accordance with such rules and regulations as the Commission may promulgate jointly with the Commodity Futures Trading Commission, maintain the funds or other property in a segregated account separate from the assets and other interests of the swap participant.

''(C) NOTIFICATION OF EXCESS VARIATION MARGIN.—Pursuant to rules and regulations adopted by the Commission, a swap participant who received funds or other property shall notify any counterparty who provided such funds or other property if the swap participant is holding excess net variation margin from that counterparty.

''(2) APPLICABILITY.—The requirements described in paragraph (1) shall—

''(A) apply only to a security-based swap between a counterparty and a swap participant that is not submitted for clearing to a clearing agency;

''(B) not apply to variation margin payments; and

''(C) not preclude any commercial arrangement regarding—

''(i) the investment of segregated funds or other property that may only be invested in such investments as the Commission may permit by rule or regulation; and

''(ii) the related allocation of gains and losses resulting from any investment of the segregated funds or other property.

''(3) USE OF INDEPENDENT THIRD-PARTY CUSTODIANS.—Each segregated account described in paragraph (1), if requested by the counterparty, may be—

''(A) carried by an independent third-party custodian; and

''(B) designated as a segregated account for and on behalf of the counterparty.

''(4) REPORTING REQUIREMENT.—If a counterparty does not choose to require segregation of the funds or other property supplied as initial margin for the purpose of margining, guaranteeing, or securing the obligations of the counterparty, the swap participant shall report to the counterparty of the swap participant on a quarterly basis that the back office procedures of the swap participant relating to initial margin and collateral requirements are in compliance with the agreement of the counterparties.''.

SEC. 766. LARGE SECURITY-BASED SWAP TRADER REPORTING.

The Securities Exchange Act of 1934 is amended by inserting after section 10A (15 U.S.C. 78j–1) the following:

''SEC. 10B. LARGE SECURITY-BASED SWAP TRADER REPORTING.

''(a) IN GENERAL.—A person that buys or sells a security-based swap shall file or cause to be filed with the Commission a report, if—

''(1) such person directly or indirectly buys or sells a particular security-based swap or class of security-based swap during any day equal to or in excess of any daily reporting threshold that has been fixed, by rule or regulation, with respect to a particular security-based swap or class of security-based swap by the Commission; or

''(2) such person directly or indirectly has or obtains a net position in such security-based swap or class of security-based swap equal to or in excess of any net position reporting threshold that has been fixed, by rule or regulation, with respect to that particular security-based swap or class of security-based swap by the Commission.

''(b) REPORT.—Each report required under subsection (a) shall—

''(1) be in such form and be filed at such time as the Commission shall prescribe, by rule or regulation; and

''(2) contain such information regarding any position or positions in such security-based swap and any group or index of securities on which such security-based swap is based or is referenced, or to which such security-based swap is related, or as to which the issuer of such security is referenced and any other instrument relating to such security or group or index of securities.

''(c) DETERMINATION OF REPORTING THRESHOLDS.—

''(1) CHIEF ECONOMIST.—In determining the reporting thresholds set forth in subsection (a), the Commission shall rely on economic analysis provided by the Chief Economist of the Commission.

''(2) CONSIDERATIONS.—The economic analysis provided under paragraph (1) shall take into account—

''(A) the market oversight benefits and the costs to market participants from preparing reports; and

''(B) the costs to the Commission from processing reports.''.

SEC. 767. CERTAIN REPORTING REQUIREMENTS.

(a) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

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

''(7) For purposes of this subsection, the Commission may determine by rule or regulation that a person is deemed to have acquired beneficial ownership of an equity security upon the purchase or sale of a swap that results in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''; and

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

''(7) For purposes of this subsection, the Commission may determine by rule or regulation that a person is deemed to have acquired beneficial ownership of an equity security upon the purchase or sale of a swap that results in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''.

(b) INSTITUTIONAL INVESTMENT MANAGER REPORTING.—Section 13(f)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(5)) is amended by adding at the end the following:

''(C) For purposes of this subsection, an account shall be deemed to be holding equity securities of a class described in subsection (d)(1), if the account holds swaps that the Commission has determined, by rule or regulation, result in the person acquiring voting or control rights equivalent to those arising from beneficial ownership of the equity security.''.

SEC. 768. PROHIBITION OF MARKET MANIPULATION, FRAUD, AND OTHER MARKET ABUSES.

(a) RULEMAKING AUTHORITY TO PREVENT FRAUD, MANIPULATION, AND DECEPTIVE CONDUCT IN SECURITY-BASED SWAPS.—Section 9 of the Securities Exchange Act of 1934 (15 U.S.C. 78i) is amended—

(1) in the section heading, by inserting ''**AND SECURITY-BASED SWAP**'' after ''**SECURITY**''; and

(2) by adding at the end the following:

''(j) ABUSES RELATED TO SECURITY-BASED SWAPS.—It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security-based swap, in connection with which such person engages in any fraudulent, deceptive, or manipulative act or practice, makes any fictitious quotation, or engages in any transaction, practice, or course of business which operates as a fraud or deceit upon any person. The Commission shall, for purposes of this subsection, by rule or regulation, define and prescribe means reasonably designed to prevent, such transactions, acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, and such quotations as are fictitious.''.

(b) ADDITIONS OF SWAPS TO CERTAIN ANTI-MANIPULATION PROVISIONS.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) any transaction in connection with any security, whereby any party to such transaction acquires—

''(A) any put, call, straddle, or other option or privilege of buying the security from or selling the security to another without being bound to do so;

''(B) any security futures product on the security; or

''(C) any swap involving the security or the issuer of the security;

''(2) any transaction in connection with any security with relation to which he has, directly or indirectly, any interest in any—

''(A) such put, call, straddle, option, or privilege;

''(B) such security futures product; or

''(C) such swap; or

''(3) any transaction in any security for any account that the person has reason to believe has, and that actually has, directly or indirectly, any interest in any—

''(A) such put, call, straddle, option, or privilege;

''(B) such security futures product with relation to such security; or

''(C) any swap involving such security or the issuer of such security.''.

SEC. 769. STATE GAMING AND BUCKET SHOP LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended to read as follows:

''(a) DAMAGES AMOUNTS.—

''(1) ACTUAL DAMAGES.—Except as provided in subsection (f), the rights and remedies provided by this title shall be in addition to any and all other rights and remedies that may exist at law or in equity, but no person permitted to maintain a suit for damages under the provisions of this title shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to such person on account of the act complained of. Except as otherwise specifically provided in this title, nothing in this title shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person, insofar as it does not conflict with the provisions of this title or the rules and regulations thereunder.

''(2) APPLICABILITY OF CERTAIN STATE LAWS.—No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of 'bucket shops' or other similar or related activities, shall invalidate—

''(A) any put, call, straddle, option, privilege, or other security subject to this title (except any security that has a pari-mutual payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

''(B) any security-based swap between eligible contract participants; or

''(C) any security-based swap effected on a national securities exchange registered pursuant to section 6(b).

''(3) LIMITATION.—Notwithstanding paragraph (2), no provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability.''.

SEC. 770. PROTECTIONS FOR MARKETING SECURITY-BASED SWAPS AND LISTING STANDARDS.

Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(l) TRADING IN SECURITY-BASED SWAPS.—

''(1) IN GENERAL.—It shall be unlawful for any person to effect a transaction in a security-based swap with or for a person that is not an eligible contract participant, unless such transaction is effected on a national securities exchange registered pursuant to subsection (b).

''(2) LISTING STANDARDS REQUIRED.—A national securities exchange or a national securities association registered pursuant to section 15A(a) may trade security-based swaps that conform with listing standards that such exchange or association files with the Commission under section 19(b).''.

SEC. 771. ENFORCEABILITY OF SECURITY-BASED SWAPS.

Section 29(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78cc(b)) is amended by striking ''and (B) that no contract'' and inserting the following: ''(B) that no agreement, contract, or transaction that is a security-based swap shall be void, voidable, or unenforceable by either party to such security-based swap, and no party thereto shall be entitled to rescind, or recover any payment made with respect to, such security-based swap under this section or any other provision of securities laws based solely on the failure of either party to the agreement, contract, or transaction to satisfy its respective obligations under sections 6(l), 13, 15(b), 17, and 17C of this title with respect to such security-based swap, and (C) that no contract''.

SA 3817. Mr. WHITEHOUSE submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1171, between lines 5 and 6, insert the following:

SEC. 989C. PREVENTING BLANK CHECK BAILOUTS.

(a) SHORT TITLE.—This section may be cited as the ''Preventing Blank Check Bailouts Act of 2010''.

(b) DEFINITIONS.—In this section:

(1) COVERED ENTITY.—The term ''covered entity''—

(A) means a corporation, partnership, association, trust, firm, joint stock company, or other business entity that—

(i) has outstanding not less than $10,000,000,000 in Government assistance; or

(ii) receives Government assistance for the protection of the public; and

(B) does not include a State, a political subdivision of a State, or an entity owned or controlled by a State or a political subdivision of a State.

(2) EXECUTIVE COMPENSATION.—The term ''executive compensation'' includes wages, salary, deferred compensation, benefits, retirement arrangements, options, bonuses, office fixtures, goods and other property, travel, entertainment or vacation expenses, and forms of compensation, obligation, or expense that are not routinely provided to all other employees of a covered entity.

(3) GOVERNMENT ASSISTANCE.—The term ''Government assistance'' means any grants, gifts, loans, equity or debt purchases, or other investments by the United States made or provided to prevent the insolvency of the recipient for the protection of the public.

(4) TAXPAYER PROTECTION ACTION.—The term ''taxpayer protection action'' means a civil action brought under subsection (c)(1).

(c) TAXPAYER PROTECTION ACTIONS.—

(1) IN GENERAL.—The district courts of the United States shall have jurisdiction of a civil action brought by the Attorney General of the United States against a covered entity seeking the abrogation of contracts of the covered entity.

(2) CONSULTATION.—The Attorney General shall consult with the President and the Secretary of the Treasury before bringing a taxpayer protection action.

(3) REMEDIES.—

(A) IN GENERAL.—In a taxpayer protection action, the court may abrogate contracts of the covered entity, including contracts relating to executive compensation, in accordance with subparagraph (B), if the court determines that a covered entity—

(i) would have become insolvent if the covered entity had not received the Government assistance outstanding to or in the covered entity; or

(ii) would become insolvent if the covered entity does not receive Government assistance.

(B) CONTRACTS TO BE ABROGATED.—In evaluating the contracts of a covered entity under this paragraph, a court shall apply a standard to the contracts that seeks to approximate the outcome that would have resulted for the parties to the contract if the covered entity—

(i) had not received the Government assistance; and

(ii) had filed a petition under chapter 7 of title 11, United States Code.

(4) INDIVIDUALS AND ENTITIES AFFECTED.—If the property rights of an individual or entity will be affected by a taxpayer protection action, the individual or entity may—

(A) intervene as a matter of right in the taxpayer protection action; and

(B) upon intervening, assert any claim relating to the property rights of the individual or entity, including a claim—

(i) relating to rights protected under the due process clause of the fifth amendment to the Constitution of the United States or the due process clause of section 1 of the 14th

amendment to the Constitution of the United States; or

(ii) that the covered entity is not insolvent or would not have become insolvent if the covered entity had not received the Government assistance.

SA 3818. Mr. MENENDEZ (for himself and Mr. MERKLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1068, strike line 10 and all that follows through page 1069, line 6, and insert the following:

SEC. 955. EMPLOYEE HEDGING PROHIBITED.

Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) is amended by adding at the end the following:

''(m) HEDGING BY OFFICERS AND DIRECTORS PROHIBITED.—

''(1) DEFINITIONS.—In this subsection—

''(A) the term 'covered employee' means—

''(i) an officer or director of an issuer of a class of securities registered under this section; and

''(ii) an employee of an issuer of a class of securities registered under this section who receives from the issuer annual wages of $1,000,000 or more;

''(B) the term 'related person' means a related person of an officer, director, or employee described in subparagraph (A), as defined by the Commission, by rule; and

''(C) the term 'wages' has the same meaning as in section 3121(a) of the Internal Revenue Code of 1986, without regard to paragraph (1) thereof.

''(2) PROHIBITION.—A covered employee or related person may not—

''(A) purchase or sell a security (other than a security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer), derivative, or other financial product that in any way hedges or limits the financial exposure of the covered employee to declines in the market value of any security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer; or

''(B) enter into an agreement with any third party in which a security issued by the issuer that employs the covered employee is a material term of the agreement, if the agreement in any way hedges or limits the financial exposure of the covered employee to declines in the market value of any security beneficially owned by the covered employee that is issued by the issuer that employs the covered employee or any affiliate of the issuer.''.

SA 3819. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 191, after line 24, insert the following new subparagraphs after subparagraph (B) and redesignate the subsequent subparagraphs:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than management responsible for the failed condition of the covered financial company who have been removed), but only to the extent of $11,725 for each individual (as indexed for inflation by regulation of the Corporation) earned within 180 days before the appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered within 180 days before the appointment of the Corporation as receiver to the extent of the number of employees covered by each such plan multiplied by $11,725 (as indexed for inflation by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C) plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

SA 3820. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 235, between lines 13 and 14, insert the following new subparagraph after subparagraph (C) and redesignate the subsequent subparagraph:

(D) SERVICES PERFORMED UNDER A COLLECTIVE BARGAIN AGREEMENT AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any collective bargaining agreement between a labor organization and a covered financial company, the Corporation as receiver accepts performance of services subject to such agreement before making any determination to exercise the right of repudiation of such collective bargaining agreement under this section—

(i) the persons covered by such collective bargaining agreement shall be paid under the terms of such agreement for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

SA 3821. Mr. BROWN of Ohio submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. EFFECT OF RULE 436(G).

Section 220.436(g) of title 17, Code of Federal Regulations, commonly referred to as ''Rule 436(g) under the Securities Act of 1933'', shall have no force or effect.

SA 3822. Mr. DODD (for himself and Mr. SHELBY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 7, insert ''(a) IN GENERAL.—'' before ''In''.

On page 114, line 14, after ''(iii)'' insert ''that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))''.

On page 114, line 21, after ''(12 U.S.C. 2001 et seq.)'' insert '', a governmental entity, or a regulated entity, as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))''.

On page 115, strike lines 18 through 20, and insert the following:

(15) COURT.—The term ''Court'' means the United States District Court for the District of Columbia.

On page 115, between lines 22 and 23, insert the following:

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term ''financial company'' under subsection (a)(10), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

On page 115, line 23, strike ''**ORDERLY LIQUIDATION AUTHORITY PANEL**'' and insert ''**JUDICIAL REVIEW**''.

On page 115, strike line 24 and all that follows through page 116, line 16.

On page 116, line 17, strike ''(b)'' and insert ''(a)''.

On page 116, strike lines 18 through 20, and insert the following:

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

On page 116, strike line 21 and all that follows through page 117, line 4, and insert the following:

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and

the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as a receiver, the Secretary shall appoint the Corporation as a receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as a receiver.

On page 117, line 9, strike ''Panel'' and insert ''Court''.

On page 117, line 13, strike ''Panel'' and insert ''Court''.

On page 117, beginning on line 16, strike '', within 24 hours of receipt of the petition filed by the Secretary,''.

On page 117, line 21, strike ''is supported'' and all that follows through line 22, and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 117, line 24, strike ''Panel'' and insert ''Court''.

On page 118, line 2, insert ''and satisfies the definition of a financial company under section 201(10)'' after ''danger of default''.

On page 118, lines 3 and 4, strike ''is supported by substantial evidence'' and insert ''is not arbitrary and capricious''.

On page 118, line 4, strike ''Panel'' and insert ''Court''.

On page 118, lines 9 and 10, strike ''is not supported by substantial evidence'' and insert ''is arbitrary and capricious''.

On page 118, line 10, strike ''Panel'' and insert ''Court''.

On page 118, between lines 16 and 17, insert the following:

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

On page 118, line 18, strike ''Panel'' and insert ''Court''.

On page 118, line 23, strike ''Panel'' and insert ''Court''.

On page 119, line 1, strike ''Panel'' and insert ''Court''.

On page 119, line 12, strike ''PANEL'' and insert ''DISTRICT COURT''.

On page 119, line 16, strike ''Third Circuit'' and insert ''District of Columbia Circuit''.

On page 119, line 17, strike ''Panel'' and insert ''Court''.

On page 119, line 23, strike ''Panel'' and insert ''Court''.

On page 120, strike lines 16 through 17 and insert ''default and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 121, lines 19 and 20, strike ''is supported by substantial evidence'' and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious''.

On page 121, line 21, strike ''(c)'' and insert ''(b)''.

On page 121, line 24, strike ''Panel'' and insert ''Court''.

On page 122, line 5, strike ''subsection (b)(1)'' and all that follows through line 9, and insert ''subsection (a)(1).''.

On page 122, strike lines 14 through 16.

On page 122, line 17, strike ''(C)'' and insert ''(A)''.

On page 122, line 19, strike ''(D)'' and insert ''(B)''.

On page 122, line 21, strike ''(E)'' and insert ''(C)''.

On page 122, line 23, strike ''(F)'' and insert ''(D)''.

On page 123, line 1, strike ''(d)'' and insert ''(c)''.

On page 123, between lines 14 and 15, insert the following:

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

On page 123, line 21, strike ''Panel'' and insert ''Court''.

On page 124, line 11, strike ''Panel'' and insert ''Court''.

On page 126, between lines 9 and 10, insert the following:

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) REPORT TO COUNCIL.—Not later than 1 years after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

On page 128, line 9, strike ''and''.

On page 128, line 12, strike the period at the end and insert ''; and''.

On page 128, between lines 12 and 13, insert the following:

(G) an evaluation of whether the company satisfies the definition of a financial company under section 201.

On page 128, line 16, strike ''202(b)(1)(A)'' and insert ''202(a)(1)(A)''.

On page 129, line 17, strike ''and''.

On page 129, line 21, strike the period at the end and insert ''; and''.

On page 129, between lines 21 and 22, insert the following:

(7) the company satisfies the definition of a financial company under section 201.

On page 132, strike lines 3 through 17, and insert the following:

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

On page 132, between lines 22 and 23, insert the following:

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

On page 135, line 15, strike ''section 202(b)'' and insert ''section 202(a)''.

On page 136, line 9, strike ''with the strong presumption'' and insert ''so''.

On page 138, line 16, insert after the period the following: ''All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

''(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

''(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

''(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

''(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

''(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

''(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.''.

On page 138, line 15, strike ''section 210(n)(13)'' and insert ''section 210(n)(11)''.

On page 147, line 3, insert before the period the following: '', and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act''.

On page 187, line 18, strike ''(B), and (C)'' and insert ''(B), (C), and (D)''.

On page 187, line 20, strike ''(D)'' and insert ''(E)''.

On page 192, insert before line 1 the following:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

On page 192, line 1, strike ''(C)'' and insert ''(E)''.

On page 192, beginning on line 3, strike ''(D) or (E)'' and insert ''(F), (G), or (H)''.

On page 192, line 5, strike ''(D)'' and insert ''(F)''.

On page 192, between lines 7 and 8, insert the following:

(G) Any wages, salaries, or commissions including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

On page 192, line 7, strike ''subparagraph (E)).'' and insert ''subparagraph (G) or (H)).''.

On page 192, line 8, strike ''(E)'' and insert ''(H)''.

On page 193, line 18, strike ''(ii)'' and insert the following:

''(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

''(iii)''.

On page 228, line 17, strike ''5th'' and insert ''3rd''.

On page 236, line 20, strike ''5th'' and insert ''3rd''.

On page 237, line 14, strike ''5th'' and insert ''3rd''.

On page 240, line 8, strike ''section 202(c)(1)'' and insert ''section 202(a)(1)''.

On page 246, strike line 21 and all the follows through page 247, line 5, and insert the following:

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

On page 254, line 24, strike ''(13)'' and insert ''(11)''.

On page 260, line 4, strike ''subsection (o)(1)(E)(ii))'' and insert ''subsection (o)(1)(D)(ii))''.

On page 263, line 16, strike ''(13)'' and insert ''(11)''.

On page 278, line 5, strike ''(9)'' and insert ''(6)''.

On page 278, line 10, strike ''(9)'' and insert ''(6)''.

On page 278, strike line 18 and all that follows through page 279, line 20.

On page 279, line 21, strike ''(8)'' and insert ''(4)''.

On page 280, line 5, strike ''(9)'' and insert ''(5)''.

On page 281, line 6, strike the period and insert the following: '', plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

''(i) the current average rate on an index of corporate obligations of comparable maturity; and

''(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.''.

On page 281, strike line 20 and all that follows through page 282, line 8, and insert the following:

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

On page 282, line 9, strike ''(11)'' and insert ''(7)''.

On page 282, strike lines 14 through 19.

On page 282, line 20, strike ''(13)'' and insert ''(8)''.

On page 283, strike lines 5 through 14 and insert the following:

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

On page 283, line 24, strike ''(14)'' and insert ''(9)''.

On page 284, line 6, insert '', including taking any actions specified'' before ''under 204(d)''.

On page 284, line 7, insert before the period '', and payments to third parties''.

On page 284, between lines 10 and 11, insert the following:

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term ''implementation expenses''—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

On page 284, strike line 13 and all that follows through page 285, line 2.

On page 285, line 3, strike ''(B)'' and insert ''(A)''.

On page 285, line 10, strike ''(C)'' and insert ''(B)''.

On page 285, line 10, strike ''ADDITIONAL''.

On page 285, line 13, strike ''(E)'' and insert ''(D)''.

On page 285, strike lines 14 through 23.

On page 285, line 24, strike ''(iii)''.

On page 285, line 21, strike ''during the initial capitalization period''.

On page 286, strike line 11 and all that follows through page 287, line 2, and insert the following:

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (C), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

On page 287, strike lines 3 through 10.

On page 289, strike line 25, and insert ''the Corporation, in consultation with the Secretary, deems appropriate.''.

On page 290, beginning on line 9, strike '', in consultation with the Secretary and the Council,''.

On page 290, line 11, insert after the period the following: ''The Corporation shall consult with the Secretary in the development and finalization of such regulations.''.

On page 295, between lines 19 and 20, insert the following:

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term ''compensation'' to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

On page 296, between lines 15 and 16, insert the following:

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.

(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

On page 1522, line 11, strike ''The third'' and insert the following:

''(a) FEDERAL RESERVE ACT.—The third''.

On page 1528, line 3, strike the end quotation marks and the final period and insert the following:

''(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010.''.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting ''claims of any Federal reserve bank related to loans made through programs or facilities authorized under the third undesignated paragraph of the Federal Reserve Act (12 U.S.C. 343),'' after ''this title,''.

On page 1523, line 17, strike ''of sufficient quality'' and insert ''sufficient''.

On page 1523, line 18, insert after the period the following: ''The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.''.

On page 1523, line 19, strike ''(ii)'' and insert the following:

''(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding.

''(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

''(iv)''.

On page 1523, line 18: insert ''and that any such program is terminated in a timely and orderly fashion'' before ''losses''.

On page 1524, line 11, strike ''assistance,'' and all that follows through line 12 and insert ''assistance.''.

On page 1525, strike line 21 and all that follows through page 1528, line 3, and insert the following:

''(D) The information submitted to Congress under subparagraph (C) related to—

''(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

''(ii) the amounts borrowed by each participant in any such program or facility;

''(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility, shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons and Ranking Members of the Committees described in subparagraph (C).''.

On page 1537, line 23, insert before the period the following: ''and a request for approval of such plan''.

On page 1537, line 23, strike ''Upon'' and all that follows through page 1538, line 6, and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.''.

On page 1538, line 16, strike ''Upon'' and all that follows through page 1547, line 6 and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

''(d) RESOLUTION OF APPROVAL.—

''(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

''(2) FAST TRACK CONSIDERATION IN SENATE.—

''(A) RECONVENING.—Upon receipt of a request under subsection (c), 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.

''(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(C) 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 request under subsection (c), and ending on the 7th day after that date (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 the 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.

''(3) RULES.—

''(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

''(i) The joint resolution of the House of Representatives shall not be referred to a committee.

''(ii) With respect to a joint resolution of the Senate—

''(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

''(II) the vote on passage shall be on the joint resolution of the House of Representatives.

''(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

''(C) 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.

''(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

''(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate 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 the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

''(4) DEFINITION.—As used in this subsection, the term 'joint resolution' means only a joint resolution—

''(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

''(B) that does not have a preamble;

''(C) the title of which is as follows: 'Joint resolution relating to the approval of a plan to guarantee obligations under section 1155 of the Restoring American Financial Stability Act of 2010'; and

''(D) the matter after the resolving clause of which is as follows: 'That Congress approves the obligation of any amount described in section 1155(c) of the Restoring American Financial Stability Act of 2010.'.''.

On page 1550, strike lines 1 through 12, and insert the following:

(3) LIQUIDITY EVENT.—The term ''liquidity event'' means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

On page 1550, strike line 24 and all that follows through page 1551, line 3, and insert the following:

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''; and

(2) in clause (v)(I), by striking ''The'' and inserting ''Not later than 3 days after making a determination under clause (i), the''.

SA 3823. Mr. LEAHY (for himself, Mr. DURBIN, Mr. ROCKEFELLER, Mr. SCHUMER, Mrs. FEINSTEIN, Mr. SPECTER, Mr. WHITEHOUSE, Ms. CANTWELL, Mr. KAUFMAN, Mrs. GILLIBRAND, Mr. WYDEN, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. BURRIS, Mrs. MCCASKILL, Mr. FRANKEN, Mr. BENNET, Mr. FEINGOLD, Mr. LAUTENBERG, Mr. WEBB, Mrs. BOXER, and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, insert the following:

SEC. _____. HEALTH INSURANCE INDUSTRY ANTITRUST ENFORCEMENT ACT.

(a) SHORT TITLE.—This section may be cited as the ''Health Insurance Industry Antitrust Enforcement Act''.

(b) RESTORING THE APPLICATION OF ANTITRUST LAWS TO HEALTH SECTOR INSURERS.—

(1) AMENDMENT TO MCCARRAN-FERGUSON ACT.—Section 3 of the Act of March 9, 1945 (15 U.S.C. 1013), commonly known as the McCarran-Ferguson Act, is amended by adding at the end the following:

''(c) Nothing contained in this Act shall modify, impair, or supersede the operation of any of the antitrust laws with respect to the business of health insurance. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given it in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.''.

(2) RELATED PROVISION.—For purposes of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, section 3(c) of the McCarran-Ferguson Act shall apply with respect to the business of health insurance without regard to whether such business is carried on for profit, notwithstanding the definition of ''Corporation'' contained in section 4 of the Federal Trade Commission Act.

SA 3824. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2010''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

(ii) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

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

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

(ii) substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

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

(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the

criteria to determine whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) for purposes of the definitions of the terms ''U.S. nonbank financial company'' and ''foreign nonbank financial company'' under subsection (a)(4).

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members, who shall each have 1 vote on the Council shall be:

(1) The Secretary of the Treasury, who shall serve as Chairperson of the Council.

(2) The Chairman of the Board of Governors.

(3) The Comptroller of the Currency.

(4) The Director of the Bureau.

(5) The Chairman of the Commission.

(6) The Chairperson of the Corporation.

(7) The Chairperson of the Commodity Futures Trading Commission.

(8) The Director of the Federal Housing Finance Agency.

(9) An independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council 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) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Independent Member of the Financial Stability Oversight Council (1).''.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial markets.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies and other Federal and State financial regulatory agencies to assess risks to the United States financial system;

(B) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(C) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(D) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(E) identify gaps in regulation that could pose risks to the financial stability of the United States;

(F) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, pursuant to section 113;

(G) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(H) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;

(I) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(J) make determinations regarding exemptions in title VII, where necessary;

(K) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(L) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;

(iii) all determinations made under section 113 or title VIII, and the basis for such determinations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from member agencies, as necessary to monitor the financial services marketplace to identify potential risks to the financial stability of the United States.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law any member agencies are authorized to submit information to the Council.

(3) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on discussions with management and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(4) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council and the member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information 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.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any

data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subsequent to subsection (b), the Council may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on

the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council shall be treated as expenses of, and paid by, the Department of the Treasury.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;

(2) to impose conditions on the manner in which the company conducts one or more activities; or

(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and in a decision described in subsection (b).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle

of national treatment and competitive equity.

Subtitle B—Financial Information and Data

SEC. 151. FINANCIAL INFORMATION AND DATA.

(a) AUTHORITY TO OBTAIN INFORMATION BY REGULATION.—

(1) IN GENERAL.—The Council is authorized to receive, and may request the production of, any information and data from Council member agencies, as necessary to identify potential risks to United States financial system stability.

(2) SUBMISSION BY COUNCIL MEMBERS.—Notwithstanding any other provision of law, any Council member agency, upon request by the Council, shall provide information and data to the Council, and the Council shall maintain the confidentiality of such information and data.

(3) FINANCIAL INFORMATION AND DATA COLLECTION.—

(A) IN GENERAL.—The Council may require, by rule, the submission of periodic and other reports from any regulated entity, solely for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a risk to United States financial system stability.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from an regulated entity, the Council shall coordinate and shall, whenever possible, rely on information and data already being collected by or provided to such agency.

(C) MITIGATION OF REQUIREMENTS IN CASE OF FOREIGN FINANCIAL PARENTS.—Before requiring the submission of reports from anY regulated entity that is affiliated with a holding company or parent company that is a foreign company, the Council shall, to the extent appropriate—

(i) coordinate with any appropriate foreign regulator of such company and any appropriate multilateral organization;

(ii) request information regarding such company from such foreign regulator; and

(iii) whenever possible, rely on information already being collected by such foreign regulator or multilateral organizational.

(D) VOLUNTARY INFORMATION AND DATA COLLECTION FROM NON-REGULATED ENTITIES.—The Council is authorized to request information and data from non regulated entities. To the extent possible, the Council shall minimize information and data requests from non regulated entities, and in all cases, such information and data requests shall be limited to information and data requests relevant to maintaining United States financial system stability. Nothing in this subparagraph shall be construed to require the provision of information or data by any non regulated entity that is not otherwise required to provide such information or data under this section or any other provision of law.

(4) DEFINITION.—As used in this subsection, the term ''regulated entity'' means any entity, other than an individual, that is regulated and supervised by a Council member agency.

(b) ADDITIONAL PROVISIONS.—

(1) INFORMATION AND DATA SHARING.—The Chairperson of the Council, in consultation with the other members of the Council, may—

(A) establish procedures, databases, and information warehouses to share information and data collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information and data collected by the Council with the Council member agencies;

(C) designate the format in which requested information and data shall be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such information and data by the Council in its analyses.

(2) APPLICABLE PRIVILEGES NOT WAIVED.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be compelled to waive, and shall not be deemed to have waived, any privilege otherwise applicable to any information or data by transferring the information or data to, or permitting that information or data to be used by—

(A) the Council;

(B) any Federal financial regulator or State financial regulator, in any capacity; or

(C) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(3) CONFIDENTIALITY OF INFORMATION.—

(A) DISCLOSURE EXEMPTION.—The Council shall maintain the confidentiality of information received under this subtitle, and any information obtained by the Council under this subtitle shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(B) COUNCIL CONFIDENTIALITY.—Notwithstanding any other provision of law, the Council may not be compelled to disclose any report or information contained therein filed with the Council under this subtitle, except that nothing in this subtitle authorizes the Council—

(i) to withhold information from Congress, upon an agreement of confidentiality; or

(ii) prevent the Council from complying with—

(I) a request for information from any other Federal department or agency or any self-regulatory organization requesting the report or information for purposes within the scope of its jurisdiction; or

(II) an order of a court of the United States in an action brought by the United States or the Council.

(C) PROTECTION OF INFORMATION AND DATA.—The Council shall maintain appropriate data security measures and ensure the protection of any proprietary information or data of any regulated entity or nonregulated entity.

(4) CONSULTATION WITH FOREIGN GOVERNMENTS.—Under the supervision of the President, and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to risks to United States financial system stability.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to determine—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company with the requirements of this subtitle.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary

financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures; and

(iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to foreign nonbank financial companies supervised by the Board of Governors and to foreign-based bank holding companies, the Board of Governors shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

(4) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of a conversion under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this section by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of

Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company;

(C) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(D) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(E) all purchases of or investment in securities issued by the company;

(F) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(G) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(d)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) STRESS TESTS.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration

plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct such activities that are determined to be financial in nature or incidental thereto in an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days after the date on which the nonbank financial company supervised by the Board of Governors was notified of the determination under section 113(a).

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (a); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not later than 18 months after the transfer date, the Board of Governors shall issue final regulations to implement this subtitle and the amendments made by this subtitle.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) UPDATE.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(e) TRANSITION PERIOD.—No revisions under subsection (d) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(f) REPORT.—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of the regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SA 3825. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title I and insert the following:

TITLE I—FINANCIAL STABILITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Financial Stability Act of 2010''.

SEC. 102. DEFINITIONS.

(a) IN GENERAL.—For purposes of this title, unless the context otherwise requires, the following definitions shall apply:

(1) BANK HOLDING COMPANY.—The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), shall be treated as a bank holding company for purposes of this title.

(2) CHAIRPERSON.—The term ''Chairperson'' means the Chairperson of the Council.

(3) MEMBER AGENCY.—The term ''member agency'' means an agency represented by a voting member of the Council.

(4) NONBANK FINANCIAL COMPANY DEFINITIONS.—

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

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

(ii) substantially engaged in, including through a branch in the United States, activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

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

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

(ii) substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956).

(C) NONBANK FINANCIAL COMPANY.—The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD OF GOVERNORS.—The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 113 shall be supervised by the Board of Governors.

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

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

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

(c) FOREIGN NONBANK FINANCIAL COMPANIES.—For purposes of the authority of the Board of Governors under this title with respect to foreign nonbank financial companies, references in this title to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company.

Subtitle A—Financial Stability Oversight Council

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) VOTING MEMBERS.—The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

(H) the Director of the Federal Housing Finance Agency; and

(I) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The Director of the Office of Financial Research—

(A) shall serve in an advisory capacity as a nonvoting member of the Council; and

(B) may not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the members then serving.

(g) NONAPPLICABILITY OF FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council 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) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Independent Member of the Financial Stability Oversight Council (1).''.

(j) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

SEC. 112. COUNCIL AUTHORITY.

(a) PURPOSES AND DUTIES OF THE COUNCIL.—

(1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected bank holding companies or nonbank financial companies;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial markets.

(2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies and other Federal and State financial regulatory agencies and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(E) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(F) identify gaps in regulation that could pose risks to the financial stability of the United States;

(G) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, pursuant to section 113;

(H) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(I) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII), and require such utilities and activities to be subject to standards established by the Board of Governors;

(J) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(K) make determinations regarding exemptions in title VII, where necessary;

(L) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(M) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market developments and potential emerging threats to the financial stability of the United States;

(iii) all determinations made under section 113 or title VIII, and the basis for such determinations; and

(iv) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) AUTHORITY TO OBTAIN INFORMATION.—

(1) IN GENERAL.—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research and member agencies, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.—Notwithstanding any other provision of law, the Office of Financial Research and any member agency are authorized to submit information to the Council.

(3) FINANCIAL DATA COLLECTION.—

(A) IN GENERAL.—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company regulated by the Board of Governors or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or such nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) MITIGATION OF REPORT BURDEN.—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraph (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subsection and subtitle B.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B 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.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the financial assets of the company;

(C) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding;

(D) the extent and types of the off-balance-sheet exposures of the company;

(E) the extent and types of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(F) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the operation of, or ownership interest in, any clearing, settlement, or payment business of the company;

(I) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(J) any other factors that the Council deems appropriate.

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company that has substantial assets or operations in the United States shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company would pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—Each determination under paragraph (1) shall be based on a consideration by the Council of—

(A) the degree of leverage of the company;

(B) the amount and nature of the United States financial assets of the company;

(C) the amount and types of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding;

(D) the extent of the United States-related off-balance-sheet exposure of the company;

(E) the extent and type of the transactions and relationships of the company with other significant nonbank financial companies and bank holding companies;

(F) the importance of the company as a source of credit for United States households, businesses, and State and local governments, and as a source of liquidity for the United States financial system;

(G) the recommendation, if any, of a member of the Council;

(H) the extent to which—

(i) assets are managed rather than owned by the company; and

(ii) ownership of assets under management is diffuse; and

(I) any other factors that the Council deems appropriate.

(c) REEVALUATION AND RESCISSION.—The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to each nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(d) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that such nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(e) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (d) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this paragraph to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this paragraph, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(4) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (3), the Council shall notify the subject nonbank financial company of the final determination of the Council under this paragraph, which shall contain a statement of the basis for the decision of the Council.

(f) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(g) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(3) or (e)(4), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

SEC. 114. REGISTRATION OF NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.

Not later than 180 days after the date of a final Council determination under section 113 that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this title.

SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the

United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards recommended under subsections (b) through (f) shall not apply to any bank holding company with total consolidated assets of less than $50,000,000,000. The Council may recommend an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under those subsections.

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

(A) risk-based capital requirements;

(B) leverage limits;

(C) liquidity requirements;

(D) resolution plan and credit exposure report requirements;

(E) concentration limits;

(F) a contingent capital requirement;

(G) enhanced public disclosures; and

(H) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Council determines appropriate; and

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1).

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of convertible debt that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

SEC. 116. REPORTS.

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of $50,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

SEC. 117. TREATMENT OF CERTAIN COMPANIES THAT CEASE TO BE BANK HOLDING COMPANIES.

(a) APPLICABILITY.—This section shall apply to any entity or a successor entity that—

(1) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(2) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

(b) TREATMENT.—If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 113 with respect to that entity.

(c) APPEAL.—

(1) REQUEST FOR HEARING.—An entity may request, in writing, an opportunity for a written or oral hearing before the Council to

appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) DECISION.—

(A) PROPOSED DECISION.—Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) NOTICE OF FINAL DECISION.—The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) CONSIDERATIONS.—In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 113(a) or 113(b), as applicable, and the definition of the term ''nonbank financial company'' under section 102. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) REVIEW.—If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

SEC. 118. COUNCIL FUNDING.

Any expenses of the Council and the Office of Financial Research shall be treated as expenses of, and paid by, the Department of the Treasury.

SEC. 119. RESOLUTION OF SUPERVISORY JURISDICTIONAL DISPUTES AMONG MEMBER AGENCIES.

(a) REQUEST FOR DISPUTE RESOLUTION.—The Council shall resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective jurisdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under Federal law);

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council resolve the dispute.

(b) COUNCIL DECISION.—The Council shall resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) FORM AND BINDING EFFECT.—A Council decision under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be binding on all Federal agencies that are parties to the dispute.

SEC. 120. ADDITIONAL STANDARDS APPLICABLE TO ACTIVITIES OR PRACTICES FOR FINANCIAL STABILITY PURPOSES.

(a) IN GENERAL.—The Council may issue recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 115, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies or the financial markets of the United States.

(b) PROCEDURE FOR RECOMMENDATIONS TO REGULATORS.—

(1) NOTICE AND OPPORTUNITY FOR COMMENT.—The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) CRITERIA.—The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) IMPLEMENTATION OF RECOMMENDED STANDARDS.—

(1) ROLE OF PRIMARY FINANCIAL REGULATORY AGENCY.—

(A) IN GENERAL.—Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) RULE OF CONSTRUCTION.—The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) IMPOSITION OF STANDARDS.—The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) REPORT TO CONGRESS.—The Council shall report to Congress on—

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) EFFECT OF RESCISSION OF IDENTIFICATION.—

(1) NOTICE.—The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) DETERMINATION OF PRIMARY FINANCIAL REGULATORY AGENCY TO CONTINUE.—

(A) IN GENERAL.—Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether standards that it has imposed under this section should remain in effect.

(B) APPEAL PROCESS.—Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company with total consolidated assets of $50,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the Council members then serving, shall require the subject company—

(1) to terminate one or more activities;

(2) to impose conditions on the manner in which the company conducts one or more activities; or

(3) if the Board of Governors determines that such action is inadequate to mitigate a threat to the financial stability of the United States in its recommendation, to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing

was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in a determination described in subsection (a) and in a decision described in subsection (b).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies, giving due regard to the principle of national treatment and competitive equity.

Subtitle B—Office of Financial Research

SEC. 151. DEFINITIONS.

For purposes of this subtitle—

(1) the terms ''Office'' and ''Director'' mean the Office of Financial Research established under this subtitle and the Director thereof, respectively;

(2) the term ''financial company'' has the same meaning as in title II, and includes an insured depository institution and an insurance company;

(3) the term ''Research and Analysis Center'' means the research and analysis center established under section 154;

(4) the term ''financial transaction data'' means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(5) the term ''position data''—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(6) the term ''financial contract'' means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(7) the term ''financial instrument'' means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

SEC. 152. OFFICE OF FINANCIAL RESEARCH ESTABLISHED.

(a) ESTABLISHMENT.—There is established within the Department of the Treasury the Office of Financial Research.

(b) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) TERM OF SERVICE.—The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) EXECUTIVE LEVEL.—The Director shall be compensated at level III of the Executive Schedule.

(4) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of Director may not, during such service, also serve as the head of any financial regulatory agency.

(5) RESPONSIBILITIES, DUTIES, AND AUTHORITY.—The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this subtitle.

(c) BUDGET.—The Director, with the approval of the Chairperson, shall establish the annual budget of the Office.

(d) OFFICE PERSONNEL.—

(1) IN GENERAL.—The Director, with approval of the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) COMPENSATION.—The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office.

(e) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) NON-COMPETE.—The Director and any staff of the Office who has had access to the transaction or position data or other business confidential information about financial entities required to report to the Office, may not, for a period of 1 year after last having access to such transaction or position data or business confidential information, be employed by or provide advice or consulting services to a financial company, regardless of whether that entity is required to report to the Office. For staff whose access to business confidential information was limited, the Director may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(g) EXECUTIVE SCHEDULE COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following new item:

''Director of the Office of Financial Research.''.

SEC. 153. PURPOSE AND DUTIES OF THE OFFICE.

(a) PURPOSE AND DUTIES.—The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in subtitle A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

(6) making the results of the activities of the Office available to financial regulatory agencies; and

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) ADMINISTRATIVE AUTHORITY.—The Office may share data and information, including software developed by the Office, with the Council and member agencies, which shared data, information, and software—

(1) shall be maintained with at least the same level of security as is used by the Office; and

(2) may not be shared with any individual or entity.

(c) GUIDANCE.—

(1) SCOPE.—The Office, in consultation with the Chairperson, shall issue guidance to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) STANDARDIZATION.—Member agencies, in consultation with the Office, shall work to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2).

(d) TESTIMONY.—The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(e) ADDITIONAL REPORTS.—The Director may, with the approval of the Chairperson, provide additional reports to Congress concerning the financial stability of the United States.

SEC. 154. ORGANIZATIONAL STRUCTURE; RESPONSIBILITIES OF RESEARCH AND ANALYSIS CENTER.

(a) IN GENERAL.—There is established within the Office, to carry out the programmatic responsibilities of the Office, the Research and Analysis Center.

(b) RESEARCH AND ANALYSIS CENTER.—The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources to develop and maintain metrics and reporting systems for risks to the financial stability of the United States.

(c) REPORTING RESPONSIBILITIES.—

(1) REQUIRED REPORTS.—Not later than 2 years after the date of enactment of this Act, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) CONTENT.—Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

SEC. 155. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) RECRUITMENT AND RETENTION PLAN.—The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

SEC. 161. REPORTS BY AND EXAMINATIONS OF NONBANK FINANCIAL COMPANIES BY THE BOARD OF GOVERNORS.

(a) REPORTS.—

(1) IN GENERAL.—The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—

(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and

(B) compliance by the company or subsidiary with the requirements of this subtitle.

(2) USE OF EXISTING REPORTS AND INFORMATION.—In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—

(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

(B) information otherwise obtainable from Federal or State regulatory agencies;

(C) information that is otherwise required to be reported publicly; and

(D) externally audited financial statements of such company or subsidiary.

(3) AVAILABILITY.—Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(b) EXAMINATIONS.—

(1) IN GENERAL.—Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to determine—

(A) the nature of the operations and financial condition of the company and such subsidiary;

(B) the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of such company or to the financial stability of the United States;

(C) the systems for monitoring and controlling such risks; and

(D) compliance by the company with the requirements of this subtitle.

(2) USE OF EXAMINATION REPORTS AND INFORMATION.—For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any depository institution subsidiary or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) COORDINATION WITH PRIMARY FINANCIAL REGULATORY AGENCY.—The Board of Governors shall—

(1) provide to the primary financial regulatory agency for any company or subsidiary, reasonable notice before requiring a report, requesting information, or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the extent possible.

SEC. 162. ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the same manner and to the same extent as if the company were a bank holding company, as provided in section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)).

(b) ENFORCEMENT AUTHORITY FOR FUNCTIONALLY REGULATED SUBSIDIARIES.—

(1) REFERRAL.—If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) BACK-UP AUTHORITY OF THE BOARD OF GOVERNORS.—If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

SEC. 163. ACQUISITIONS.

(a) ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) ACQUISITION OF NONBANK COMPANIES.—

(1) PRIOR NOTICE FOR LARGE ACQUISITIONS.—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) EXEMPTIONS.—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) NOTICE PROCEDURES.—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) STANDARDS FOR REVIEW.—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $50,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) LIMITATION ON BANK HOLDING COMPANIES.—Any standards established under subsections (b) through (f) shall not apply to

any bank holding company with total consolidated assets of less than $50,000,000,000, but the Board of Governors may establish an asset threshold greater than $50,000,000,000 for the applicability of any particular standard under subsections (b) through (f).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may, by regulation or order, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures; and

(iii) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to foreign nonbank financial companies supervised by the Board of Governors and to foreign-based bank holding companies, the Board of Governors shall give due regard to the principle of national treatment and competitive equity.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection; and

(C) take into account any recommendations of the Council under section 115.

(4) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may promulgate regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of long-term hybrid debt that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In establishing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of a conversion under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this section by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company, as applicable, of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a time frame determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company;

(C) all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(D) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(E) all purchases of or investment in securities issued by the company;

(F) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(G) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(d)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(h) STRESS TESTS.—The Board of Governors shall conduct analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether the companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions. The Board of Governors may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States.

SEC. 166. EARLY REMEDIATION REQUIREMENTS.

(a) IN GENERAL.—The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a), except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) PURPOSE OF THE EARLY REMEDIATION REQUIREMENTS.—The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) REMEDIATION REQUIREMENTS.—The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

SEC. 167. AFFILIATIONS.

(a) AFFILIATIONS.—Nothing in this subtitle shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843).

(b) REQUIREMENT.—

(1) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, the Board of Governors may require such company to establish and conduct such activities that are determined to be financial in nature or incidental thereto in an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days after the date on which the nonbank financial company supervised by the Board of Governors was notified of the determination under section 113(a).

(2) INTERNAL FINANCIAL ACTIVITIES.—For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 4(k) of the Bank Holding Company Act of 1956, as described in paragraph (1), shall not include internal financial activities conducted for a nonbank financial company supervised by the Board of Governors or any affiliate, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity of such company during the year prior to the date of enactment of this Act, such company may continue to engage in such activity as long as at least ⅔ of the assets or ⅔ of the revenues generated from the activity are from or attributable to such company, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(c) REGULATIONS.—The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (a); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

SEC. 168. REGULATIONS.

Except as otherwise specified in this subtitle, not later than 18 months after the transfer date, the Board of Governors shall issue final regulations to implement this subtitle and the amendments made by this subtitle.

SEC. 169. AVOIDING DUPLICATION.

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this subtitle that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

SEC. 170. SAFE HARBOR.

(a) REGULATIONS.—The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) CONSIDERATIONS.—In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 113 in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require supervision by the Board of Governors of a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) UPDATE.—The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf

of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(e) TRANSITION PERIOD.—No revisions under subsection (d) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(f) REPORT.—The Chairperson of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of the regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

SA 3826. Mr. SHELBY (for himself, Mr. MCCONNELL, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. JOHANNS, Mrs. HUTCHISON, Mr. VITTER, Mr. BUNNING, Mr. CHAMBLISS, Mr. CORNYN, Mr. BOND, Mr. ENZI, and Mr. ALEXANDER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title X and insert the following:

TITLE X—DIVISION FOR CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Act of 2010''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) COVERED PERSON.—The term covered person means—

(A) a depository institution; or

(B) a person other than a depository institution that is subject to one or more of the enumerated consumer protection statutes.

(2) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1042.

(3) DIVISION.—The term ''Division'' means the Division for Consumer Financial Protection.

(4) ENUMERATED CONSUMER PROTECTION STATUTES.—The term ''enumerated consumer protection statute'' means—

(A) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), other than sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Homeowners Protection Act of 1998 (12 U.S.C. 4901, et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(J) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(K) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(L) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(M) the S.A.F.E. Mortgage Licensing Act of 2008 (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

(P) the authority of the Federal Trade Commission, the Board of Governors, the Office of Thrift Supervision, and the National Credit Union Administration to prohibit unfair or deceptive acts or practices under section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f))—

(i) only to the same extent that the Board of Governors, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission could exercise such authority over covered persons on the day before the designated transfer date; and

(ii) except that such authority shall not extend to persons or activities covered under the Fair Credit Reporting Act that do not meet the definition in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)).

(5) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any person (other than an individual) that takes applications for residential mortgage transactions and offers or negotiates terms of residential mortgage transactions.

(6) NONDEPOSITORY COVERED PERSON.—The term ''nondepository covered person'' means any entity that—

(A) is not a depository institution;

(B) is not an affiliate or subsidiary of a depository institution;

(C) is not subject to supervision or enforcement by a Federal banking regulator; and

(D) is a financial services provider subject to the enumerated consumer protection statutes.

(7) PERSON.—The term ''person'' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

(8) PRUDENTIAL REGULATOR.—The term ''prudential regulator'' means the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, as appropriate, with respect to depository institutions and affiliates of depository institutions supervised by such agencies.

(9) RESIDENTIAL MORTGAGE TRANSACTION.—The term ''residential mortgage transaction'' has the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

Subtitle A—Division of Consumer Protection

SEC. 1011. ESTABLISHMENT OF THE DIVISION.

(a) DIVISION ESTABLISHED.—There is established within the Federal Deposit Insurance Corporation the Division for Consumer Protection, which shall regulate, by rule or order, consumer financial products and services under the enumerated consumer protection statutes, and where applicable, as provided for in section 1024, enforce the enumerated consumer protection statutes.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) DIRECTOR.—The Division shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, to serve for a term of 4 years.

(2) DEPUTY DIRECTOR.—The Director shall designate a Deputy Director.

(3) ACTING DIRECTOR.—In the event of a vacancy in the position of the Director or during the absence or disability of the Director, the Deputy Director shall act as Director.

(4) COMPENSATION.—The Director shall be compensated at a rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

SEC. 1012. ADMINISTRATION.

(a) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit, the functions of which shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services; and

(C) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services.

(2) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit, the functions of which shall include establishing a single, toll-free telephone number, a website, and database to facilitate the centralized collection, monitoring, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with other Federal agencies to route complaints to other Federal regulators, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Division systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Division may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO CONGRESS.—The Director shall present an annual report to Congress, not later than March 31 of each year on the complaints received by the Division in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Division shall share consumer complaint information with prudential regulators, other Federal agencies, and State agencies, consistent with Federal law applicable to personally identifiable information. The prudential regulators and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Division, consistent with Federal law applicable to personally identifiable information.

(b) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Division shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions. The Director shall serve as the Vice Chairperson on the

Financial Literacy and Education Commission established under section 513 of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702).

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve financial literacy, consistent with the National Strategy for Financial Education.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Division in carrying out its functions, including working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

SEC. 1013. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Division in the exercise of its functions under this title, the enumerated consumer protection statutes, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, and consumer financial products or services and seek representation of the interests of nondepository covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but not less frequently than twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1014. COORDINATION.

The Director shall coordinate with other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1015. FUNDING.

(a) FEES AND ASSESSMENTS.—

(1) IN GENERAL.—The Chairperson shall establish, by rule, an assessment schedule, including the assessment base and rates, applicable to covered persons subject to section 1023 to recover the costs of the Corporation in carrying out its responsibilities described under this title. The Chairperson may, by rule or other action, impose additional assessments on insured depository institutions to regulate consumer financial products and services under the enumerated consumer protection statutes specified in this title.

(2) LIMITATION.—The assessments imposed by the Chairperson by rules established pursuant to paragraph (1) shall not exceed the costs reasonably necessary to cover the expenses associated with carrying outs its supervisory and rulemaking responsibilities under this title.

(b) FUND ESTABLISHED.—

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

(2) RULE OF CONSTRUCTION.—Any amounts deposited into the CFP Fund may not be construed to be Government funds or appropriated monies.

(3) NO APPORTIONMENT.—Any amounts deposited into the CFP Fund shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

(4) USE OF FUNDS.—Funds in the CFP Fund shall be immediately available to the Corporation and under the control of the Corporation, and shall remain available until expended, to pay the expenses of the Corporation in carrying out its duties and responsibilities pursuant to this title.

(c) CONFORMING AMENDMENTS.—Section 11(a)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4)(A)) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) by redesignating clause (iii) as clause (iv); and

(3) by inserting after clause (ii) the following:

''(iii) to carry out additional duties pursuant to the Consumer Financial Protection Act of 2010; and''.

(d) FUNDING.—The Chairperson shall dedicate not less than 10 percent of the annual estimated budget of the Corporation, excluding any funding provided pursuant to section 11(c) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)), to carry out the requirements specified in this title.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Director shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Corporation, as well as other significant initiatives conducted by the Division, during the preceding year and the plan of the Division for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Division, in consultation with the Federal Trade Commission has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Division was a party during the preceding year; and

(6) the actions taken regarding rules, orders, and supervisory actions with respect to nondepository covered persons which are not credit unions or depository institutions.

SEC. 1017. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Division

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Division shall seek to implement and, where applicable, enforce the enumerated consumer protection statutes consistently for the purpose of ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Division is authorized to exercise its authorities under the enumerated consumer protection statutes for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair or deceptive acts and practices;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; and

(4) enumerated consumer protection statutes are enforced consistently, without regard to the status of a person as a depository institution, in order to ensure uniform consumer protection in the marketplace.

(c) FUNCTIONS.—The primary functions of the Division are—

(1) issuing rules, orders and guidance implementing the enumerated consumer protection statutes;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers, and the proper functioning of such markets;

(4) subject to section 1023, supervising nondepository covered persons for compliance with the enumerated consumer protection statutes, and taking appropriate enforcement action to address violations of the enumerated consumer protection statutes;

(5) conducting financial education programs; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Division.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Division is authorized to exercise its authorities under the enumerated consumer protection statutes to implement the provisions of the enumerated consumer protection statutes.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) IN GENERAL.—The Division may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Division to administer and carry out the enumerated consumer protection statutes, and to prevent evasions thereof.

(2) EXCLUSIVE RULEMAKING AUTHORITY.—Notwithstanding any other provisions of Federal law, to the extent that a provision of the enumerated consumer protection statutes authorizes the Division and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with the enumerated consumer protection statutes, the Division shall have the exclusive authority to prescribe rules pursuant to those provisions of law, with respect to compliance with those provisions of law by covered persons.

(3) CORPORATION APPROVAL REQUIRED.—No rule or regulation of the Division may become effective with respect to any person,

unless approved by majority vote of the members of the Board of Directors of the Corporation.

(c) PRESERVATION OF STATE REGULATION OF INSURANCE.—Nothing in this title shall abrogate or limit in any way section 2 of the Act of March 9, 1945 (15 U.S.C. 1012) or otherwise grant the Division authority over the business of insurance.

(d) LIMITATION ON AUTHORITY OF DIVISION.—The Division shall have no authority to issue rules, regulations, orders, or guidance that affect any underwriting standards of depository institutions or affiliates thereof.

SEC. 1023. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) APPLICABILITY.—

(1) COVERED PERSONS.—

(A) APPLICABILITY.—

(i) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to any person that is—

(I) a type or category of mortgage loan originator that the Division, in consultation with the Federal Trade Commission, determines by rule is subject to the requirements of this section; or

(II) a nondepository covered person that demonstrates a pattern or practice of violations of the enumerated consumer protection statutes, that the Division, in consultation with the Federal Trade Commission, determines by order, after notice and opportunity for response, is subject to the requirements of this section.

(ii) RULE OF CONSTRUCTION.—On and after the effective date of this section, the Division may consider violations which occurred during the previous 3 years in making a determination that a nondepository covered person shall be subject to this section.

(B) FACTORS FOR CONSIDERATION.—In determining whether a mortgage loan originator is subject to the requirements of this section, the Division shall consider the risks to consumers created by the provision of such consumer financial products or services and the probability that supervision can serve to diminish such risks. In making these determinations, the Division shall consider—

(i) the total financial assets of the mortgage loan originator;

(ii) the volume of transactions involving consumer financial products or service in which the mortgage loan originator engages;

(iii) the complexity and nature of the financial products or services offered by the mortgage loan originator; and

(iv) the number and nature of any violations of the enumerated consumer protections statutes by the mortgage loan originator.

(C) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prohibit the Division from exempting any class of mortgage loan originator or any specific mortgage loan originator from the requirements of this section.

(2) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1024.

(b) SUPERVISION.—

(1) IN GENERAL.—The Division shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of the enumerated consumer protection statutes;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Division shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a), is based on the assessment by the Division of the risks posed to consumers, and taking into consideration, as applicable—

(A) the volume of transactions involving consumer financial products or services in which the persons described in subsection (a) engage;

(B) the number and nature of any violations of the enumerated consumer protection statutes on the part of the persons described in subsection (a); and

(C) the extent to which such institutions are subject to oversight by State authorities for consumer protection.

(3) COORDINATION.—To minimize regulatory burden, the Division shall coordinate its supervisory activities with the supervisory activities conducted by Federal regulators and the State regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Division shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a) that have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—The authority of the Chairperson to require reports from persons described in subsection (a), as permitted under paragraph (1), regarding information under the control of such person, including the authority to require reports when such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Division shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Division shall prescribe rules to facilitate supervision of persons described in subsection (a) and assessment and detection of risks to consumers.

(B) REGISTRATION.—

(i) IN GENERAL.—The Division shall prescribe rules regarding registration requirements for persons described in subsection (a).

(ii) EXCEPTION FOR RELATED PERSONS.—The Division may not impose requirements under this section regarding the registration of a related person.

(iii) REGISTRATION INFORMATION.—Subject to rules prescribed by the Division, the Division shall publicly disclose the registration information about persons described in subsection (a) to facilitate the ability of consumers to identify persons described in subsection (a) registered with the Division.

(C) RECORDKEEPING.—The Division may require a person described in subsection (a), to generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) REQUIREMENTS CONCERNING OBLIGATIONS.—The Division may prescribe rules regarding a person described in subsection (a), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers.

(E) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Division shall consult with State regulatory authorities regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE DIVISION TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that a Federal law authorizes the Division and another Federal agency, other than the Federal Trade Commission, to enforce an enumerated consumer protection statute, the Division shall have exclusive authority to enforce that enumerated consumer protection statute with respect to any person described in subsection (a)(1)(A).

(2) REFERRAL.—Any Federal agency authorized to enforce an enumerated consumer protection statute may recommend in writing to the Division that the Division initiate an enforcement proceeding, as the Division is authorized by that statute or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Division and the Federal Trade Commission shall coordinate enforcement actions for violations of Federal law regarding the offering or provision of consumer financial products or services by any person described in subsection (a)(1)(A), or service providers thereto. In carrying out this subparagraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce a Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Division or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Division or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(4) SAVINGS PROVISION.—Except as specifically stated in this title regarding the enumerated consumer protection statutes, nothing in this title shall be construed as modifying, limiting, or otherwise affecting the authority of the Federal Trade Commission under the Federal Trade Commission Act, or any other provision of law.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—To the extent that Federal law authorizes the Division and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a) under that provision of law for purposes of assuring compliance with the enumerated consumer protection statutes and any regulations thereunder, the Division shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Division under this section, to the same extent as if

such service provider were engaged in a service relationship with a bank, and the Division were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). For purposes of this subsection, a service provider shall not include persons described in section 1024.

(f) ENFORCEMENT AUTHORITY.—The Division may enforce the requirements of this title with respect to persons described in subsection (a) pursuant to section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), as if such person were an insured depository institution.

SEC. 1024. SUPERVISION AND ENFORCEMENT ON CONSUMER PROTECTION.

The Division shall have no authority to require reports from, conduct examinations of, or take enforcement action against an insured depository institution or any affiliate thereof. The authorities of the Division and the Director under this title do not alter or affect the authority of the prudential regulators to require reports from, conduct examinations of, or take enforcement action against an insured depository institution or any affiliate thereof for purposes of assessing and enforcing compliance by such person with the requirements of the enumerated consumer protection statutes and obtaining information about the activities subject to such law and the associated compliance systems or procedures of such institution or affiliate.

SEC. 1025. DISCLOSURES.

(a) IN GENERAL.—To the extent that the enumerated consumer protection statutes require disclosures to consumers, the Division shall prescribe rules to ensure that such disclosures make timely, appropriate, and effective disclosures to consumers of the costs, benefits, and risks associated with the product or service.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Division under this section requiring disclosures may include a model form that may be used.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued by the Division shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing disclosure rules, the Division shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any person that uses a model form issued by the Division shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Division may permit a person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued by the Division.

(2) SAFE HARBOR.—The standards and procedures issued by the Division shall be designed to encourage persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Division may establish a limited period during which a person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer protection statute.

(3) PUBLIC DISCLOSURE.—The rules of the Division shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage nondepository covered persons to conduct effective trials.

Subtitle C—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1041. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term ''consumer financial protection functions'' means—

(A) the functions and authorities of the Board of Governors under the enumerated consumer protection statutes, except those functions retained by the prudential regulators under section 1024; and

(B) the functions and authorities of the Federal Trade Commission under the enumerated consumer laws with respect to persons subject to the jurisdiction of the Division under section 1023, except that the Federal Trade Commission shall retain concurrent enforcement jurisdiction under the enumerated consumer protection statutes over such persons, consistent with subsection 1023(c); and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively the Board of Governors and the Federal Trade Commission.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Division.

(B) BOARD OF GOVERNORS AUTHORITY.—The Division shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Trade Commission are transferred to the Division. Nothing in this title shall be construed to require a mandatory transfer of any employee of the Federal Trade Commission to the Division.

(B) COMMISSION AUTHORITY.—The Division shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINATION AND ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (b) do not affect the authority of the prudential regulators from conducting examinations or initiating and maintaining enforcement proceedings in accordance with section 1023.

(d) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1042. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Division under section 1041; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1043. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1041(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Division by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this title shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Division by this title, except that the Division, subject to section 1023, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1041(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection

function of the Federal Trade Commission transferred to the Division by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this title shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Division by this title, except that the Division, subject to section 1023, shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(c) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Division.

(d) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the Division—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (g) that will be enforced by the Division; and

(2) shall publish a list of such rules in the Federal Register.

(e) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Division.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Division according to its terms.

SEC. 1044. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Division and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Division by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Division, in a manner that the Division and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Division for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM BOARD, FTC.—Each employee transferred under this title from the Board of Governors or the Federal Trade Commission shall be placed in a position at the Division with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE BANKS.—

(A) COMPARABILITY.—Each employee transferred under this title from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Division from the Board of Governors who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Division are not subject to any additional certification requirements before being placed in a comparable examiner position at the Division examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Division—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Division determines that the reassignment is necessary for the efficient operation of the Division.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Division to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Division.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Division to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Division determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Division is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Division shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Division as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Division determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Division is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Division shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Division.

(ii) EMPLOYER CONTRIBUTION.—The Division shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Division may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) DIVISION PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Division employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Division shall deposit into the account established under clause (i) the employer contributions that the Division makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Division shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, which the employee was enrolled in on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Division shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Division decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Division takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; or

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Division decides not to continue participation in any long term care insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Division takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Division shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Division and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Division, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Division shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Division and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Division shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Division—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency, including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Division shall

coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

Subtitle D—Amendment to the Federal Deposit Insurance Act

SEC. 1051. CORPORATION BOARD MEMBERSHIP.

Section 2(a)(1)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1812(a)(1)(B)) is amended to read as follows:

''(B) the Head of Supervision for the Board of Governors of the Federal Reserve System; and''.

SA 3827. Mr. SHELBY (for himself and Mr. DODD) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; as follows:

On page 111, line 7, insert ''(a) IN GENERAL.—'' before ''In''.

On page 114, line 14, after ''(iii)'' insert ''that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))''.

On page 114, line 21, after ''(12 U.S.C. 2001 et seq.)'' insert '', a governmental entity, or a regulated entity, as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))''.

On page 115, strike lines 18 through 20, and insert the following:

(15) COURT.—The term ''Court'' means the United States District Court for the District of Columbia.

On page 115, between lines 22 and 23, insert the following:

(b) DEFINITIONAL CRITERIA.—For purpose of the definition of the term ''financial company'' under subsection (a)(10), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

On page 115, line 23, strike ''**ORDERLY LIQUIDATION AUTHORITY PANEL**'' and insert ''**JUDICIAL REVIEW**''.

On page 115, strike line 24 and all that follows through page 116, line 16.

On page 116, line 17, strike ''(b)'' and insert ''(a)''.

On page 116, strike lines 18 through 20, and insert the following:

(1) PETITION TO DISTRICT COURT.—

(A) DISTRICT COURT REVIEW.—

On page 116, strike line 21 and all that follows through page 117, line 4, and insert the following:

(i) PETITION TO DISTRICT COURT.—Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as a receiver, the Secretary shall appoint the Corporation as a receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as a receiver.

On page 117, line 9, strike ''Panel'' and insert ''Court''.

On page 117, line 13, strike ''Panel'' and insert ''Court''.

On page 117, beginning on line 16, strike '', within 24 hours of receipt of the petition filed by the Secretary,''.

On page 117, line 21, strike ''is supported'' and all that follows through line 22, and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 117, line 24, strike ''Panel'' and insert ''Court''.

On page 118, line 2, insert ''and satisfies the definition of a financial company under section 201(10)'' after ''danger of default''.

On page 118, lines 3 and 4, strike ''is supported by substantial evidence'' and insert ''is not arbitrary and capricious''.

On page 118, line 4, strike ''Panel'' and insert ''Court''.

On page 118, lines 9 and 10, strike ''is not supported by substantial evidence'' and insert ''is arbitrary and capricious''.

On page 118, line 10, strike ''Panel'' and insert ''Court''.

On page 118, between lines 16 and 17, insert the following:

(v) PETITION GRANTED BY OPERATION OF LAW.—If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

On page 118, line 18, strike ''Panel'' and insert ''Court''.

On page 118, line 23, strike ''Panel'' and insert ''Court''.

On page 119, line 1, strike ''Panel'' and insert ''Court''.

On page 119, line 12, strike ''PANEL'' and insert ''DISTRICT COURT''.

On page 119, line 16, strike ''Third Circuit'' and insert ''District of Columbia Circuit''.

On page 119, line 17, strike ''Panel'' and insert ''Court''.

On page 119, line 23, strike ''Panel'' and insert ''Court''.

On page 120, strike lines 16 through 17 and insert ''default and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious.''.

On page 121, lines 19 and 20, strike ''is supported by substantial evidence'' and insert ''and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious''.

On page 121, line 21, strike ''(c)'' and insert ''(b)''.

On page 121, line 24, strike ''Panel'' and insert ''Court''.

On page 122, line 5, strike ''subsection (b)(1)'' and all that follows through line 9, and insert ''subsection (a)(1).''.

On page 122, strike lines 14 through 16.

On page 122, line 17, strike ''(C)'' and insert ''(A)''.

On page 122, line 19, strike ''(D)'' and insert ''(B)''.

On page 122, line 21, strike ''(E)'' and insert ''(C)''.

On page 122, line 23, strike ''(F)'' and insert ''(D)''.

On page 123, line 1, strike ''(d)'' and insert ''(c)''.

On page 123, between lines 14 and 15, insert the following:

(d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

(1) BASELINE PERIOD.—Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

(2) EXTENSION OF TIME LIMIT.—The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

(A) to—

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

(3) SECOND EXTENSION OF TIME LIMIT.—

(A) IN GENERAL.—The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

(B) ADDITIONAL REPORT REQUIRED.—Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) ONGOING LITIGATION.—The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

(i) the ongoing litigation justifying the need for an extension; and

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

(5) REGULATIONS.—The Corporation may issue regulations governing the termination of receiverships under this title.

(6) NO LIABILITY.—The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

On page 123, line 21, strike ''Panel'' and insert ''Court''.

On page 124, line 11, strike ''Panel'' and insert ''Court''.

On page 126, between lines 9 and 10, insert the following:

(g) STUDY OF PROMPT CORRECTIVE ACTION IMPLEMENTATION BY THE APPROPRIATE FEDERAL AGENCIES.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

(B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

(3) REPORT TO COUNCIL.—Not later than 1 years after the date of enactment of this Act, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

(4) COUNCIL REPORT OF ACTION.—Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

On page 128, line 9, strike ''and''.

On page 128, line 12, strike the period at the end and insert ''; and''.

On page 128, between lines 12 and 13, insert the following:

(G) an evaluation of whether the company satisfies the definition of a financial company under section 201.

On page 128, line 16, strike ''202(b)(1)(A)'' and insert ''202(a)(1)(A)''.

On page 129, line 17, strike ''and''.

On page 129, line 21, strike the period at the end and insert ''; and''.

On page 129, between lines 21 and 22, insert the following:

(7) the company satisfies the definition of a financial company under section 201.

On page 132, strike lines 3 through 17, and insert the following:

(A) IN GENERAL.—Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

(ii) describing the plan of, and actions taken by, the Corporation to wind down the covered financial company;

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

(iv) describing the reasons for the provision of any funding to the receivership out of the Fund;

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

On page 132, between lines 22 and 23, insert the following:

(C) CONGRESSIONAL TESTIMONY.—The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

On page 135, line 15, strike ''section 202(b)'' and insert ''section 202(a)''.

On page 136, line 9, strike ''with the strong presumption'' and insert ''so''.

On page 138, line 16, insert after the period the following: ''All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for—

''(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

''(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

''(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

''(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

''(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

''(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.''.

On page 138, line 15, strike ''section 210(n)(13)'' and insert ''section 210(n)(11)''.

On page 147, line 3, insert before the period the following: '', and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act''.

On page 187, line 18, strike ''(B), and (C)'' and insert ''(B), (C), and (D)''.

On page 187, line 20, strike ''(D)'' and insert ''(E)''.

On page 192, insert before line 1 the following:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of $11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by $11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

On page 192, line 1, strike ''(C)'' and insert ''(E)''.

On page 192, beginning on line 3, strike ''(D) or (E)'' and insert ''(F), (G), or (H)''.

On page 192, line 5, strike ''(D)'' and insert ''(F)''.

On page 192, between lines 7 and 8, insert the following:

(G) Any wages, salaries, or commissions including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

On page 192, line 7, strike ''subparagraph (E)).'' and insert ''subparagraph (G) or (H)).''.

On page 192, line 8, strike ''(E)'' and insert ''(H)''.

On page 193, line 18, strike ''(ii)'' and insert the following:

''(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

''(iii)''.

On page 228, line 17, strike ''5th'' and insert ''3rd''.

On page 236, line 20, strike ''5th'' and insert ''3rd''.

On page 237, line 14, strike ''5th'' and insert ''3rd''.

On page 240, line 8, strike ''section 202(c)(1)'' and insert ''section 202(a)(1)''.

On page 246, strike line 21 and all the follows through page 247, line 5, and insert the following:

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

On page 254, line 24, strike ''(13)'' and insert ''(11)''.

On page 260, line 4, strike ''subsection (o)(1)(E)(ii))'' and insert ''subsection (o)(1)(D)(ii))''.

On page 263, line 16, strike ''(13)'' and insert ''(11)''.

On page 278, line 5, strike ''(9)'' and insert ''(6)''.

On page 278, line 10, strike ''(9)'' and insert ''(6)''.

On page 278, strike line 18 and all that follows through page 279, line 20.

On page 279, line 21, strike ''(8)'' and insert ''(4)''.

On page 280, line 5, strike ''(9)'' and insert ''(5)''.

On page 281, line 6, strike the period and insert the following: '', plus an interest rate surcharge to be determined by the Secretary,

which shall be greater than the difference between—

''(i) the current average rate on an index of corporate obligations of comparable maturity; and

''(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.''.

On page 281, strike line 20 and all that follows through page 282, line 8, and insert the following:

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

On page 282, line 9, strike ''(11)'' and insert ''(7)''.

On page 282, strike lines 14 through 19.

On page 282, line 20, strike ''(13)'' and insert ''(8)''.

On page 283, strike lines 5 through 14 and insert the following:

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

On page 283, line 24, strike ''(14)'' and insert ''(9)''.

On page 284, line 6, insert '', including taking any actions specified'' before ''under 204(d)''.

On page 284, line 7, insert before the period '', and payments to third parties''.

On page 284, between lines 10 and 11, insert the following:

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term ''implementation expenses''—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

On page 284, strike line 13 and all that follows through page 285, line 2.

On page 285, line 3, strike ''(B)'' and insert ''(A)''.

On page 285, line 10, strike ''(C)'' and insert ''(B)''.

On page 285, line 10, strike ''ADDITIONAL''.

On page 285, line 13, strike ''(E)'' and insert ''(D)''.

On page 285, strike lines 14 through 23.

On page 285, line 24, strike ''(iii)''.

On page 285, line 21, strike ''during the initial capitalization period''.

On page 286, strike line 11 and all that follows through page 287, line 2, and insert the following:

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (C), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than $50,000,000,000 that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

On page 287, strike lines 3 through 10.

On page 289, strike line 25, and insert ''the Corporation, in consultation with the Secretary, deems appropriate.''.

On page 290, beginning on line 9, strike '', in consultation with the Secretary and the Council,''.

On page 290, line 11, insert after the period the following: ''The Corporation shall consult with the Secretary in the development and finalization of such regulations.''.

On page 295, between lines 19 and 20, insert the following:

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term ''compensation'' to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

On page 296, between lines 15 and 16, insert the following:

(d) FDIC INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 203(d) and orderly liquidation plan under section 210(n)(14);

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) FUNDING.—

(A) INITIAL FUNDING.—The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) ADDITIONAL FUNDING.—If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) TREASURY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this title;

(B) an analysis of the approval by the Secretary of the policies and procedures of the

Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) FREQUENCY.—Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) REPORTS AND TESTIMONY.—The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) TERMINATION OF RESPONSIBILITIES.—The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) PRIMARY FINANCIAL REGULATORY AGENCY INSPECTOR GENERAL REVIEWS.—

(1) SCOPE.—Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) REPORTS AND TESTIMONY.—Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) NO OTHER FUNDING.—Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) LIMIT ON GOVERNMENTAL ACTIONS.—No governmental entity may take any action to circumvent the purposes of this title.

(c) CONFLICT OF INTEREST.—In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.

(a) PROHIBITION AUTHORITY.—The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) AUTHORITY TO ISSUE ORDER.—The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) AUTHORIZED ACTIONS.—

(1) IN GENERAL.—The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) PROCEDURES.—The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) REGULATIONS.—The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

On page 1522, line 11, strike ''The third'' and insert the following:

''(a) FEDERAL RESERVE ACT.—The third''.

On page 1528, line 3, strike the end quotation marks and the final period and insert the following:

''(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010.''.

(b) CONFORMING AMENDMENT.—Section 507(a)(2) of title 11, United States Code, is amended by inserting ''claims of any Federal reserve bank related to loans made through programs or facilities authorized under the third undesignated paragraph of the Federal Reserve Act (12 U.S.C. 343),'' after ''this title,''.

On page 1523, line 17, strike ''of sufficient quality'' and insert ''sufficient''.

On page 1523, line 18, insert after the period the following: ''The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph.''.

On page 1523, line 19, strike ''(ii)'' and insert the following:

''(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding.

''(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

''(iv)''.

On page 1523, line 18: insert ''and that any such program is terminated in a timely and orderly fashion'' before ''losses''.

On page 1524, line 11, strike ''assistance,'' and all that follows through line 12 and insert ''assistance.''.

On page 1525, strike line 21 and all that follows through page 1528, line 3, and insert the following:

''(D) The information submitted to Congress under subparagraph (C) related to—

''(i) the identity of the participants in an emergency lending program or facility commenced under this paragraph;

''(ii) the amounts borrowed by each participant in any such program or facility;

''(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons and Ranking Members of the Committees described in subparagraph (C).''.

On page 1537, line 23, insert before the period the following: ''and a request for approval of such plan''.

On page 1537, line 23, strike ''Upon'' and all that follows through page 1538, line 6, and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.''.

On page 1538, line 16, strike ''Upon'' and all that follows through page 1547, line 6 and insert the following: ''The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.

''(d) RESOLUTION OF APPROVAL.—

''(1) ADDITIONAL DEBT GUARANTEE AUTHORITY.—A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

''(2) FAST TRACK CONSIDERATION IN SENATE.—

''(A) RECONVENING.—Upon receipt of a request under subsection (c), 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.

''(B) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

''(C) 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 request under subsection (c), and ending on the 7th day after that date (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 the 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.

''(3) RULES.—

''(A) COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.—If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

''(i) The joint resolution of the House of Representatives shall not be referred to a committee.

''(ii) With respect to a joint resolution of the Senate—

''(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

''(II) the vote on passage shall be on the joint resolution of the House of Representatives.

''(B) TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.—If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

''(C) 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.

''(D) RULES OF THE SENATE.—This subsection is enacted by Congress—

''(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate 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 the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

''(4) DEFINITION.—As used in this subsection, the term 'joint resolution' means only a joint resolution—

''(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

''(B) that does not have a preamble;

''(C) the title of which is as follows: 'Joint resolution relating to the approval of a plan to guarantee obligations under section 1155 of the Restoring American Financial Stability Act of 2010'; and

''(D) the matter after the resolving clause of which is as follows: 'That Congress approves the obligation of any amount described in section 1155(c) of the Restoring American Financial Stability Act of 2010.'.''.

On page 1550, strike lines 1 through 12, and insert the following:

(3) LIQUIDITY EVENT.—The term ''liquidity event'' means—

(A) an exceptional and broad reduction in the general ability of financial market participants—

(i) to sell financial assets without an unusual and significant discount; or

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

(B) an unusual and significant reduction in the ability of financial market participants to obtain unsecured credit.

On page 1550, strike line 24 and all that follows through page 1551, line 3, and insert the following:

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''; and

(2) in clause (v)(I), by striking ''The'' and inserting ''Not later than 3 days after making a determination under clause (i), the''.

SA 3828. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1270, after line 21, insert the following:

(f) SCOPE OF AUTHORITY.—No regulation promulgated under the rulemaking authority of the Bureau under this title shall be enforceable with respect to an entity that has not violated a consumer protection statute and is—

(1) an insured depository institution with assets of not more than $5,000,000,000;

(2) an insured credit union with assets of not more than $5,000,000,000; or

(3) a nonfinancial institution,

until such time as the Bureau certifies that the regulation will not result in an unfunded mandate, increase costs for consumers, or reduce the availability of credit and credit products.

SA 3829. Ms. MURKOWSKI submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1270, after line 21, insert the following:

(f) EXEMPTIONS.—Each insured depository institution or insured credit union with assets of not more than $5,000,000,000, and that has not violated the consumer protection statutes is exempt from the regulations of the Bureau. Supervision and enforcement for such institutions shall remain with the primary prudential regulator for such institutions.

SA 3830. Mr. VITTER submitted an amendment intended to be proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title II, add the following:

SEC. 212. PROHIBITION ON ALL BAILOUTS.

(a) PROHIBITION.— The United States Government shall not use any funds to bail out creditors or shareholders of any company by paying to any creditor or shareholder, under this or any title, any funds for the purpose of covering the losses of such creditor or shareholder on its investments in such company or ensuring that the amount that such claimant receives on a claim is more than such claimant is entitled to receive on such claim under the Bankruptcy Code. The United States Government shall not coordinate with or participate in any effort involving any foreign or multi-national entity to use foreign or multi-national resources to circumvent the purposes of this title.

(b) REESTABLISHING THE FEDERAL RESERVE LENDER OF LAST RESORT FUNCTION.—

(1) RULEMAKING REQUIRED.—Notwithstanding any provision of this Act or any other provision of law, the Board of Governors, in consultation with the Secretary, shall, not later than 12 months after the date of enactment of this Act, issue rules that shall govern the creation of any emergency stabilization actions by the Board of Governors.

(2) REQUIREMENTS.—At a minimum, rules required under this subsection shall—

(A) prescribe under what circumstances the program may and may not be used in the future;

(B) prescribe how the program shall ensure that it will only be used by solvent companies and will not be used to prevent failure of otherwise failing firms;

(C) determine what type of collateral the Board of Governors will accept against emergency lending to ensure that all lending is done against good collateral;

(D) prescribe how much that collateral will be discounted in order to ensure against taxpayer losses;

(E) address how the Board of Governors and the Secretary shall ensure that the program does not allocate credit or artificially prop up certain segments of the economy;

(F) address how the Board of Governors will transfer any assets associated with losses to the lending program to the Secretary to ensure that losses from emergency lending do not lead to inflationary pressures;

(G) establish procedures by which the Board of Governors would modify and change such rules to ensure a proper notice and comment period, including publicly documenting the need for the rule change; and

(H) include any other factors that the Board of Governors and the Secretary deem appropriate.

(c) LIQUIDATION REQUIRED.—All financial companies put into receivership under this title shall be liquidated within 2 years of being put into receivership. No taxpayer funds may be used

(1) to provide assistance to—

(A) a company that is in bankruptcy, in receivership under title II, or in any other insolvency proceeding; or

(B) any company that would otherwise need to be placed into receivership under Federal or State laws; or

(2) to prevent the liquidation of any financial company under this title.

(d) RECOVERY OF FUNDS.—All funds expended in the liquidation of a financial company under this title shall be recovered from the disposition of assets of such financial company.

(e) NO LOSSES TO TAXPAYERS.—Taxpayers shall bear no losses from the exercise of any authority under this title.

(f) NO FDIC BAILOUTS—Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823 (c)(4)G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by inserting ''for which the Corporation has been appointed receiver'' before ''would have serious''; and

(B) in the undesignated matter following subclause (II), by inserting ''for the winding up of the insured depository institution for which the Corporation has been appointed receiver'' after ''provide assistance under this section''

SA 3831. Mr. SHELBY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title X and insert the following:

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

SEC. 1001. SHORT TITLE.

This title may be cited as the ''Consumer Financial Protection Act of 2010''.

SEC. 1002. DEFINITIONS.

Except as otherwise provided in this title, for purposes of this title, the following definitions shall apply:

(1) AFFILIATE.—The term ''affiliate'' means any person that controls, is controlled by, or is under common control with another person.

(2) BUREAU.—The term ''Bureau'' means the Bureau of Consumer Financial Protection.

(3) BUSINESS OF INSURANCE.—The term ''business of insurance'' means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary to such writing or reinsuring and the activities relating to the writing of insurance or the reinsuring of risks conducted by persons who act as, or are, officers, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons.

(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 that is described in one or more categories under—

(A) paragraph (13) and is offered or provided for use by consumers primarily for personal, family, or household purposes; or

(B) clause (i), (iii), (ix), or (x) of paragraph (13)(A), and is delivered, offered, or provided in connection with a consumer financial product or service referred to in subparagraph (A).

(6) COVERED PERSON.—The term ''covered person'' means—

(A) any person that engages in offering or providing a consumer financial product or service; and

(B) any affiliate of a person described in subparagraph (A) if such affiliate acts as a service provider to such person.

(7) 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.

(8) DEPOSIT-TAKING ACTIVITY.—The term ''deposit-taking activity'' means—

(A) the acceptance of deposits, maintenance of deposit accounts, or the provision of services related to the acceptance of deposits or the maintenance of deposit accounts;

(B) the acceptance of funds, the provision of other services related to the acceptance of funds, or the maintenance of member share accounts by a credit union; or

(C) the receipt of funds or the equivalent thereof, as the Bureau may determine by rule or order, received or held by a covered person (or an agent for a covered person) for the purpose of facilitating a payment or transferring funds or value of funds between a consumer and a third party.

(9) DESIGNATED TRANSFER DATE.—The term ''designated transfer date'' means the date established under section 1062.

(10) DIRECTOR.—The term ''Director'' means the Director of the Bureau.

(11) ENUMERATED CONSUMER LAWS.—The term ''enumerated consumer laws'' means—

(A) the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.);

(B) the Consumer Leasing Act of 1976 (15 U.S.C. 1667 et seq.);

(C) the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.);

(D) the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.);

(E) the Fair Credit Billing Act (15 U.S.C. 1666 et seq.);

(F) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), except with respect to sections 615(e) and 628 of that Act (15 U.S.C. 1681m(e), 1681w);

(G) the Home Owners Protection Act of 1998 (12 U.S.C. 4901 et seq.);

(H) the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.);

(I) subsections (c) through (f) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)–(f));

(J) sections 502 through 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6802–6809);

(K) the Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.);

(L) the Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note);

(M) the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.);

(N) the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.);

(O) the Truth in Lending Act (15 U.S.C. 1601 et seq.); and

(P) the Truth in Savings Act (12 U.S.C. 4301 et seq.).

(12) FEDERAL CONSUMER FINANCIAL LAW.—The term ''Federal consumer financial law'' means the provisions of this title, the enumerated consumer laws, the laws for which authorities are transferred under subtitles F and H, and any rule or order prescribed by the Bureau under this title, an enumerated consumer law, or pursuant to the authorities transferred under subtitles F and H.

(13) FINANCIAL PRODUCT OR SERVICE.—The term ''financial product or service''—

(A) means—

(i) extending credit and servicing loans, including acquiring, purchasing, selling,

brokering, or other extensions of credit (other than solely extending commercial credit to a person who originates consumer credit transactions);

(ii) extending or brokering leases of personal or real property that are the functional equivalent of purchase finance arrangements, 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 a lease 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 Bureau;

(iii) providing real estate settlement services or performing appraisals of real estate or personal property;

(iv) engaging in deposit-taking activities, transmitting or exchanging funds, or otherwise acting as a custodian of funds or any financial instrument for use by or on behalf of a consumer;

(v) selling, providing, or issuing stored value or payment instruments, except that, in the case of a sale of, or transaction to reload, stored value, only if the seller exercises substantial control over the terms or conditions of the stored value provided to the consumer where, for purposes of this clause—

(I) a seller shall not be found to exercise substantial control over the terms or conditions of the stored value if the seller is not a party to the contract with the consumer for the stored value product, and another person is principally responsible for establishing the terms or conditions of the stored value; and

(II) advertising the nonfinancial goods or services of the seller on the stored value card or device is not in itself an exercise of substantial control over the terms or conditions;

(vi) providing check cashing, check collection, or check guaranty services;

(vii) providing payments or other financial data processing products or services to a consumer by any technological means, including processing or storing financial or banking data for any payment instrument, or through any payments systems or network used for processing payments data, including payments made through an online banking system or mobile telecommunications network, except that a person shall not be deemed to be a covered person with respect to financial data processing solely because the person—

(I) unknowingly or incidentally processes, stores, or transmits over the Internet, telephone line, mobile network, or any other mode of transmission, as part of a stream of other types of data, financial data in a manner that such data is undifferentiated from other types of data of the same form that the person processes, stores, or transmits;

(II) is a merchant, retailer, or seller of any nonfinancial good or service who engages in financial data processing by transmitting or storing payments data about a consumer exclusively for purpose of initiating payments instructions by the consumer to pay such person for the purchase of, or to complete a commercial transaction for, such nonfinancial good or service sold directly by such person to the consumer; or

(III) provides access to a host server to a person for purposes of enabling that person to establish and maintain a website;

(viii) providing financial advisory services to consumers on individual financial matters or relating to proprietary financial products or services (other than by publishing any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation, including publishing market data, news, or data analytics or investment information or recommendations that are not tailored to the individual needs of a particular consumer), including—

(I) providing credit counseling to any consumer; and

(II) providing services to assist a consumer with debt management or debt settlement, modifying the terms of any extension of credit, or avoiding foreclosure;

(ix) collecting, analyzing, maintaining, or providing consumer report information or other account information, including information relating to the credit history of consumers, used or expected to be used in connection with any decision regarding the offering or provision of a consumer financial product or service, except to the extent that—

(I) a person—

(aa) collects, analyzes, or maintains information that relates solely to the transactions between a consumer and such person; or

(bb) provides the information described in item (aa) to an affiliate of such person; and

(II) the information described in subclause (I)(aa) is not used by such person or affiliate in connection with any decision regarding the offering or provision of a consumer financial product or service to the consumer, other than credit described in section 1027(a)(2)(A);

(x) collecting debt related to any consumer financial product or service; and

(xi) such other financial product or service as may be defined by the Bureau, by regulation, for purposes of this title, if the Bureau finds that such financial product or service is—

(I) entered into or conducted as a subterfuge or with a purpose to evade any Federal consumer financial law; or

(II) permissible for a bank or for a financial holding company to offer or to provide under any provision of a Federal law or regulation applicable to a bank or a financial holding company, and has, or likely will have, a material impact on consumers; and

(B) does not include the business of insurance.

(14) 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.

(15) INSURED CREDIT UNION.—The term ''insured credit union'' has the same meaning as in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(16) PAYMENT INSTRUMENT.—The term ''payment instrument'' means a check, draft, warrant, money order, traveler's check, electronic instrument, or other instrument, payment of funds, or monetary value (other than currency).

(17) PERSON.—The term ''person'' means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(18) PERSON REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—The term ''person regulated by the Commodity Futures Trading Commission'' means any person that is registered, or required by statute or regulation to be registered, with the Commodity Futures Trading Commission, but only to the extent that the activities of such person are subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act.

(19) PERSON REGULATED BY THE COMMISSION.—The term ''person regulated by the Commission'' means a person who is—

(A) a broker or dealer that is required to be registered under the Securities Exchange Act of 1934;

(B) an investment adviser that is registered under the Investment Advisers Act of 1940;

(C) an investment company that is required to be registered under the Investment Company Act of 1940, and any company that has elected to be regulated as a business development company under that Act;

(D) a national securities exchange that is required to be registered under the Securities Exchange Act of 1934;

(E) a transfer agent that is required to be registered under the Securities Exchange Act of 1934;

(F) a clearing corporation that is required to be registered under the Securities Exchange Act of 1934;

(G) any self-regulatory organization that is required to be registered with the Commission;

(H) any nationally recognized statistical rating organization that is required to be registered with the Commission;

(I) any securities information processor that is required to be registered with the Commission;

(J) any municipal securities dealer that is required to be registered with the Commission;

(K) any other person that is required to be registered with the Commission under the Securities Exchange Act of 1934; and

(L) any employee, agent, or contractor acting on behalf of, registered with, or providing services to, any person described in any of subparagraphs (A) through (K), but only to the extent that any person described in any of subparagraphs (A) through (K), or the employee, agent, or contractor of such person, acts in a regulated capacity.

(20) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term ''person regulated by a State insurance regulator'' means any person that is engaged in the business of insurance and subject to regulation by any State insurance regulator, but only to the extent that such person acts in such capacity.

(21) PERSON THAT PERFORMS INCOME TAX PREPARATION ACTIVITIES FOR CONSUMERS.—The term ''person that performs income tax preparation activities for consumers'' means—

(A) any tax return preparer (as defined in section 7701(a)(36) of the Internal Revenue Code of 1986), regardless of whether compensated, but only to the extent that the person acts in such capacity;

(B) any person regulated by the Secretary under section 330 of title 31, United States Code, but only to the extent that the person acts in such capacity; and

(C) any authorized IRS e-file Providers (as defined for purposes of section 7216 of the Internal Revenue Code of 1986), but only to the extent that the person acts in such capacity.

(22) PRUDENTIAL REGULATOR.—The term ''prudential regulator'' means—

(A) in the case of an insured depository institution, the appropriate Federal banking agency, as that term is defined in section 3 of the Federal Deposit Insurance Act; and

(B) in the case of an insured credit union, the National Credit Union Administration.

(23) RELATED PERSON.—The term ''related person''—

(A) shall apply only with respect to a covered person that is not a bank holding company (as that term is defined in section 2 of the Bank Holding Company Act of 1956), credit union, or depository institution;

(B) shall be deemed to mean a covered person for all purposes of any provision of Federal consumer financial law; and

(C) means—

(i) any director, officer, or employee charged with managerial responsibility for,

or controlling shareholder of, or agent for, such covered person;

(ii) any shareholder, consultant, joint venture partner, or other person, as determined by the Bureau (by rule or on a case-by-case basis) who materially participates in the conduct of the affairs of such covered person; and

(iii) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any—

(I) violation of any provision of law or regulation; or

(II) breach of a fiduciary duty.

(24) SERVICE PROVIDER.—

(A) IN GENERAL.—The term ''service provider'' means any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service, including a person that—

(i) participates in designing, operating, or maintaining the consumer financial product or service; or

(ii) processes transactions relating to the consumer financial product or service (other than unknowingly or incidentally transmitting or processing financial data in a manner that such data is undifferentiated from other types of data of the same form as the person transmits or processes).

(B) EXCEPTIONS.—The term ''service provider'' does not include a person solely by virtue of such person offering or providing to a covered person—

(i) a support service of a type provided to businesses generally or a similar ministerial service; or

(ii) time or space for an advertisement for a consumer financial product or service through print, newspaper, or electronic media.

(C) RULE OF CONSTRUCTION.—A person that is a service provider shall be deemed to be a covered person to the extent that such person engages in the offering or provision of its own consumer financial product or service.

(25) STATE.—The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)).

(26) 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.

(27) TRANSMITTING OR EXCHANGING FUNDS.—The term ''transmitting or exchanging funds'' means receiving currency, monetary value, or payment instruments from a consumer 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 through other businesses that facilitate third-party transfers within the United States or to or from the United States.

Subtitle A—Bureau of Consumer Financial Protection

SEC. 1011. ESTABLISHMENT OF THE BUREAU.

(a) BUREAU ESTABLISHED.—There is established in the Federal Reserve System the Bureau of Consumer Financial Protection, which shall regulate the offering and provision of consumer financial products or services under the Federal consumer financial laws.

(b) DIRECTOR AND DEPUTY DIRECTOR.—

(1) IN GENERAL.—There is established the position of the Director, who shall serve as the head of the Bureau.

(2) APPOINTMENT.—Subject to paragraph (3), the Director shall be appointed by the President, by and with the advice and consent of the Senate.

(3) QUALIFICATION.—The President shall nominate the Director from among individuals who are citizens of the United States.

(4) COMPENSATION.—The Director shall be compensated at the rate prescribed for level II of the Executive Schedule under section 5313 of title 5, United States Code.

(5) DEPUTY DIRECTOR.—There is established the position of Deputy Director, who shall—

(A) be appointed by the Director; and

(B) serve as acting Director in the absence or unavailability of the Director.

(c) TERM.—

(1) IN GENERAL.—The Director shall serve for a term of 5 years.

(2) EXPIRATION OF TERM.—An individual may serve as Director after the expiration of the term for which appointed, until a successor has been appointed and qualified.

(3) REMOVAL FOR CAUSE.—The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office.

(d) SERVICE RESTRICTION.—No Director or Deputy Director may hold any office, position, or employment in any Federal reserve bank, Federal home loan bank, covered person, or service provider during the period of service of such person as Director or Deputy Director.

(e) OFFICES.—The principal office of the Bureau shall be in the District of Columbia. The Director may establish regional offices of the Bureau, including in cities in which the Federal reserve banks, or branches of such banks, are located, in order to carry out the responsibilities assigned to the Bureau under the Federal consumer financial laws.

SEC. 1012. EXECUTIVE AND ADMINISTRATIVE POWERS.

(a) POWERS OF THE BUREAU.—The Bureau is authorized to establish the general policies of the Bureau with respect to all executive and administrative functions, including—

(1) the establishment of rules for conducting the general business of the Bureau, in a manner not inconsistent with this title;

(2) to bind the Bureau and enter into contracts;

(3) directing the establishment and maintenance of divisions or other offices within the Bureau, in order to carry out the responsibilities under the Federal consumer financial laws, and to satisfy the requirements of other applicable law;

(4) to coordinate and oversee the operation of all administrative, enforcement, and research activities of the Bureau;

(5) to adopt and use a seal;

(6) to determine the character of and the necessity for the obligations and expenditures of the Bureau;

(7) the appointment and supervision of personnel employed by the Bureau;

(8) the distribution of business among personnel appointed and supervised by the Director and among administrative units of the Bureau;

(9) the use and expenditure of funds;

(10) implementing the Federal consumer financial laws through rules, orders, guidance, interpretations, statements of policy, examinations, and enforcement actions; and

(11) performing such other functions as may be authorized or required by law.

(b) DELEGATION OF AUTHORITY.—The Director of the Bureau may delegate to any duly authorized employee, representative, or agent any power vested in the Bureau by law.

(c) AUTONOMY OF THE BUREAU.—

(1) COORDINATION WITH THE BOARD OF GOVERNORS.—Notwithstanding section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) and any other provision of law applicable to the supervision or examination of persons with respect to Federal consumer financial laws, the Board of Governors may delegate to the Bureau the authorities to examine persons subject to the jurisdiction of the Board of Governors for compliance with the Federal consumer financial laws.

(2) AUTONOMY.—Notwithstanding the authorities granted to the Board of Governors under the Federal Reserve Act, the Board of Governors may not—

(A) intervene in any matter or proceeding before the Director, including examinations or enforcement actions, unless otherwise specifically provided by law;

(B) appoint, direct, or remove any officer or employee of the Bureau; or

(C) merge or consolidate the Bureau, or any of the functions or responsibilities of the Bureau, with any division or office of the Board of Governors or the Federal reserve banks.

(3) RULES AND ORDERS.—No rule or order of the Bureau shall be subject to approval or review by the Board of Governors. The Board of Governors may not delay or prevent the issuance of any rule or order of the Bureau.

(4) RECOMMENDATIONS AND TESTIMONY.—No officer or agency of the United States shall have any authority to require the Director or any other officer of the Bureau to submit legislative recommendations, or testimony or comments on legislation, to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to the Congress, if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the Director or such officer, and do not necessarily reflect the views of the Board of Governors or the President.

SEC. 1013. ADMINISTRATION.

(a) PERSONNEL.—

(1) APPOINTMENT.—

(A) IN GENERAL.—The Director may fix the number of, and appoint and direct, all employees of the Bureau.

(B) EMPLOYEES OF THE BUREAU.—The Director is authorized to employ attorneys, compliance examiners, compliance supervision analysts, economists, statisticians, and other employees as may be deemed necessary to conduct the business of the Bureau. Notwithstanding any other provision of law, all such employees shall be appointed and compensated on terms and conditions that are consistent with the terms and conditions set forth in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l)).

(2) COMPENSATION.—The Director shall at all times provide compensation and benefits to each class of employees that, at a minimum, are equivalent to the compensation and benefits then being provided by the Board of Governors for the corresponding class of employees.

(b) SPECIFIC FUNCTIONAL UNITS.—

(1) RESEARCH.—The Director shall establish a unit whose functions shall include researching, analyzing, and reporting on—

(A) developments in markets for consumer financial products or services, including market areas of alternative consumer financial products or services with high growth rates and areas of risk to consumers;

(B) access to fair and affordable credit for traditionally underserved communities;

(C) consumer awareness, understanding, and use of disclosures and communications regarding consumer financial products or services;

(D) consumer awareness and understanding of costs, risks, and benefits of consumer financial products or services; and

(E) consumer behavior with respect to consumer financial products or services.

(2) COMMUNITY AFFAIRS.—The Director shall establish a unit whose functions shall include providing information, guidance, and technical assistance regarding the offering and provision of consumer financial products or services to traditionally underserved consumers and communities.

(3) COLLECTING AND TRACKING COMPLAINTS.—

(A) IN GENERAL.—The Director shall establish a unit whose functions shall include establishing a single, toll-free telephone number, a website, and a database to facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services. The Director shall coordinate with other Federal agencies to route complaints to other Federal regulators, where appropriate.

(B) ROUTING CALLS TO STATES.—To the extent practicable, State agencies may receive appropriate complaints from the systems established under subparagraph (A), if—

(i) the State agency system has the functional capacity to receive calls or electronic reports routed by the Bureau systems; and

(ii) the State agency has satisfied any conditions of participation in the system that the Bureau may establish, including treatment of personally identifiable information and sharing of information on complaint resolution or related compliance procedures and resources.

(C) REPORTS TO THE CONGRESS.—The Director shall present an annual report to Congress not later than March 31 of each year on the complaints received by the Bureau in the prior year regarding consumer financial products and services. Such report shall include information and analysis about complaint numbers, complaint types, and, where applicable, information about resolution of complaints.

(D) DATA SHARING REQUIRED.—To facilitate preparation of the reports required under subparagraph (C), supervision and enforcement activities, and monitoring of the market for consumer financial products and services, the Bureau shall share consumer complaint information with prudential regulators, other Federal agencies, and State agencies, consistent with Federal law applicable to personally identifiable information. The prudential regulators and other Federal agencies shall share data relating to consumer complaints regarding consumer financial products and services with the Bureau, consistent with Federal law applicable to personally identifiable information.

(c) OFFICE OF FAIR LENDING AND EQUAL OPPORTUNITY.—

(1) ESTABLISHMENT.—The Director shall establish within the Bureau the Office of Fair Lending and Equal Opportunity.

(2) FUNCTIONS.—The Office of Fair Lending and Equal Opportunity shall have such powers and duties as the Director may delegate to the Office, including—

(A) providing oversight and enforcement of Federal laws intended to ensure the fair, equitable, and nondiscriminatory access to credit for both individuals and communities that are enforced by the Bureau, including the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act;

(B) coordinating fair lending and fair housing efforts of the Bureau with other Federal agencies and State regulators, as appropriate, to promote consistent, efficient, and effective enforcement of Federal fair lending laws;

(C) working with private industry, fair lending, civil rights, consumer and community advocates on the promotion of fair lending compliance and education; and

(D) providing annual reports to Congress on the efforts of the Bureau to fulfill its fair lending mandate.

(3) ADMINISTRATION OF OFFICE.—There is established the position of Assistant Director of the Bureau for Fair Lending and Equal Opportunity, who—

(A) shall be appointed by the Director; and

(B) shall carry out such duties as the Director may delegate to such Assistant Director.

(d) OFFICE OF FINANCIAL LITERACY.—

(1) ESTABLISHMENT.—The Director shall establish an Office of Financial Literacy, which shall be responsible for developing and implementing initiatives intended to educate and empower consumers to make better informed financial decisions.

(2) OTHER DUTIES.—The Office of Financial Literacy shall develop and implement a strategy to improve the financial literacy of consumers that includes measurable goals and objectives, in consultation with the Financial Literacy and Education Commission, consistent with the National Strategy for Financial Education, through activities including providing opportunities for consumers to access—

(A) financial counseling;

(B) information to assist with the evaluation of credit products and the understanding of credit histories and scores;

(C) savings, borrowing, and other services found at mainstream financial institutions;

(D) activities intended to—

(i) prepare the consumer for educational expenses and the submission of financial aid applications, and other major purchases;

(ii) reduce debt; and

(iii) improve the financial situation of the consumer;

(E) assistance in developing long-term savings strategies; and

(F) wealth building and financial services during the preparation process to claim earned income tax credits and Federal benefits.

(3) COORDINATION.—The Office of Financial Literacy shall coordinate with other units within the Bureau in carrying out its functions, including—

(A) working with the Community Affairs Office to implement the strategy to improve financial literacy of consumers; and

(B) working with the research unit established by the Director to conduct research related to consumer financial education and counseling.

(4) REPORT.—Not later than 24 months after the designated transfer date, and annually thereafter, the Director shall submit a report on its financial literacy activities and strategy to improve financial literacy of consumers to—

(A) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(B) the Committee on Financial Services of the House of Representatives.

(5) MEMBERSHIP IN FINANCIAL LITERACY AND EDUCATION COMMISSION.—Section 513(c)(1) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(c)(1)) is amended—

(A) in subparagraph (B), by striking ''and'' at the end;

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

(C) by inserting after subparagraph (B) the following new subparagraph:

''(C) the Director of the Bureau of Consumer Financial Protection; and''.

(6) CONFORMING AMENDMENT.—Section 513(d) of the Financial Literacy and Education Improvement Act (20 U.S.C. 9702(d)) is amended by adding at the end the following: ''The Director of the Bureau of Consumer Financial Protection shall serve as the Vice Chairman.''.

SEC. 1014. CONSUMER ADVISORY BOARD.

(a) ESTABLISHMENT REQUIRED.—The Director shall establish a Consumer Advisory Board to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.

(b) MEMBERSHIP.—In appointing the members of the Consumer Advisory Board, the Director shall seek to assemble experts in consumer protection, financial services, community development, fair lending, and consumer financial products or services and seek representation of the interests of covered persons and consumers, without regard to party affiliation. Not fewer than 6 members shall be appointed upon the recommendation of the regional Federal Reserve Bank Presidents, on a rotating basis.

(c) MEETINGS.—The Consumer Advisory Board shall meet from time to time at the call of the Director, but, at a minimum, shall meet at least twice in each year.

(d) COMPENSATION AND TRAVEL EXPENSES.—Members of the Consumer Advisory Board who are not full-time employees of the United States shall—

(1) be entitled to receive compensation at a rate fixed by the Director while attending meetings of the Consumer Advisory Board, including travel time; and

(2) be allowed travel expenses, including transportation and subsistence, while away from their homes or regular places of business.

SEC. 1015. COORDINATION.

The Bureau shall coordinate with the Commission, the Commodity Futures Trading Commission, and other Federal agencies and State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.

SEC. 1016. APPEARANCES BEFORE AND REPORTS TO CONGRESS.

(a) APPEARANCES BEFORE CONGRESS.—The Director of the Bureau shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives at semi-annual hearings regarding the reports required under subsection (b).

(b) REPORTS REQUIRED.—The Bureau shall, concurrent with each semi-annual hearing referred to in subsection (a), prepare and submit to the President and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, a report, beginning with the session following the designated transfer date.

(c) CONTENTS.—The reports required by subsection (b) shall include—

(1) a discussion of the significant problems faced by consumers in shopping for or obtaining consumer financial products or services;

(2) a justification of the budget request of the previous year;

(3) a list of the significant rules and orders adopted by the Bureau, as well as other significant initiatives conducted by the Bureau, during the preceding year and the plan of the Bureau for rules, orders, or other initiatives to be undertaken during the upcoming period;

(4) an analysis of complaints about consumer financial products or services that the Bureau has received and collected in its central database on complaints during the preceding year;

(5) a list, with a brief statement of the issues, of the public supervisory and enforcement actions to which the Bureau was a party during the preceding year;

(6) the actions taken regarding rules, orders, and supervisory actions with respect to covered persons which are not credit unions or depository institutions;

(7) an assessment of significant actions by State attorneys general or State regulators relating to Federal consumer financial law; and

(8) an analysis of the efforts of the Bureau to fulfill the fair lending mission of the Bureau.

SEC. 1017. FUNDING; PENALTIES AND FINES.

(a) TRANSFER OF FUNDS FROM BOARD OF GOVERNORS.—

(1) IN GENERAL.—Each year (or quarter of such year), beginning on the designated transfer date, and each quarter thereafter, the Board of Governors shall transfer to the Bureau from the combined earnings of the Federal Reserve System, the amount determined by the Director to be reasonably necessary to carry out the authorities of the Bureau under Federal consumer financial law, taking into account such other sums made available to the Bureau from the preceding year (or quarter of such year).

(2) FUNDING CAP.—

(A) IN GENERAL.—Notwithstanding paragraph (1), and in accordance with this paragraph, the amount that shall be transferred to the Bureau in each fiscal year shall not exceed a fixed percentage of the total operating expenses of the Federal Reserve System, as reported in the Annual Report, 2009, of the Board of Governors, equal to—

(i) 10 percent of such expenses in fiscal year 2011;

(ii) 11 percent of such expenses in fiscal year 2012; and

(iii) 12 percent of such expenses in fiscal year 2013, and in each year thereafter.

(B) AMOUNT ADJUSTED FOR INFLATION.—The dollar amount referred to in subparagraph (A)(iii) shall be adjusted annually, using the percent by which the average urban consumer price index for the quarter preceding the date of the payment differs from the average of that index for the same quarter in the prior year.

(3) TRANSITION PERIOD.—Beginning on the date of enactment of this Act and until the designated transfer date, the Board of Governors shall transfer to the Bureau the amount estimated by the Secretary needed to carry out the authorities granted to the Bureau under Federal consumer financial law, from the date of enactment of this Act until the designated transfer date.

(4) BUDGET AND FINANCIAL MANAGEMENT.—

(A) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the financial operating plans and forecasts of the Director, as prepared by the Director in the ordinary course of the operations of the Bureau, and copies of the quarterly reports of the financial condition and results of operations of the Bureau, as prepared by the Director in the ordinary course of the operations of the Bureau.

(B) FINANCIAL STATEMENTS.—The Bureau shall prepare annually a statement of—

(i) assets and liabilities and surplus or deficit;

(ii) income and expenses; and

(iii) sources and application of funds.

(C) FINANCIAL MANAGEMENT SYSTEMS.—The Bureau shall implement and maintain financial management systems that comply substantially with Federal financial management systems requirements and applicable Federal accounting standards.

(D) ASSERTION OF INTERNAL CONTROLS.—The Director shall provide to the Comptroller General of the United States an assertion as to the effectiveness of the internal controls that apply to financial reporting by the Bureau, using the standards established in section 3512(c) of title 31, United States Code.

(E) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Director to consult with or obtain the consent or approval of the Director of the Office of Management and Budget with respect to any report, plan, forecast, or other information referred to in subparagraph (A) or any jurisdiction or oversight over the affairs or operations of the Bureau.

(5) AUDIT OF THE BUREAU.—

(A) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Bureau in accordance with the United States generally accepted government auditing standards, as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Bureau are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Bureau pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Bureau shall remain in possession and custody of the Bureau. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General, and the right of access of the Comptroller General to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(B) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Bureau, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Bureau at the time submitted to the Congress.

(C) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5), professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Bureau shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.

(b) CONSUMER FINANCIAL PROTECTION FUND.—

(1) SEPARATE FUND IN FEDERAL RESERVE BOARD ESTABLISHED.—There is established in the Federal Reserve Board a separate fund, to be known as the ''Consumer Financial Protection Fund'' (referred to in this section as the ''Bureau Fund'').

(2) FUND RECEIPTS.—All amounts transferred to the Bureau under subsection (a) shall be deposited into the Bureau Fund.

(3) INVESTMENT AUTHORITY.—

(A) AMOUNTS IN BUREAU FUND MAY BE INVESTED.—The Bureau may request the Board of Governors to invest the portion of the Bureau Fund that is not, in the judgment of the Bureau, required to meet the current needs of the Bureau.

(B) ELIGIBLE INVESTMENTS.—Investments authorized by this paragraph shall be made by the Board of Governors in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Bureau Fund, as determined by the Bureau.

(C) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Bureau Fund shall be credited to the Bureau Fund.

(c) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Bureau Fund shall be immediately available to the Bureau and under the control of the Director, and shall remain available until expended, to pay the expenses of the Bureau in carrying out its duties and responsibilities. The compensation of the Director and other employees of the Bureau and all other expenses thereof may be paid from, obtained by, transferred to, or credited to the Bureau Fund under this section.

(2) FUNDS THAT ARE NOT GOVERNMENT FUNDS.—Funds obtained by or transferred to the Bureau Fund shall not be construed to be Government funds or appropriated monies.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Bureau Fund and in the Civil Penalty Fund established under subsection (d) shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority.

(d) PENALTIES AND FINES.—

(1) ESTABLISHMENT OF VICTIMS RELIEF FUND.—There is established in the Federal Reserve Board a fund to be known as the ''Consumer Financial Protection Civil Penalty Fund'' (referred to in this subsection as the ''Civil Penalty Fund''). If the Bureau obtains a civil penalty against any person in any judicial or administrative action under Federal consumer financial laws, the Bureau shall deposit into the Civil Penalty Fund, the amount of the penalty collected.

(2) PAYMENT TO VICTIMS.—Amounts in the Civil Penalty Fund shall be available to the Bureau, without fiscal year limitation, for payments to the victims of activities for which civil penalties have been imposed under the Federal consumer financial laws. To the extent such victims cannot be located or such payments are otherwise not practicable, the Bureau may use such funds for the purpose of consumer education and financial literacy programs.

SEC. 1018. EFFECTIVE DATE.

This subtitle shall become effective on the date of enactment of this Act.

Subtitle B—General Powers of the Bureau

SEC. 1021. PURPOSE, OBJECTIVES, AND FUNCTIONS.

(a) PURPOSE.—The Bureau shall seek to implement and, where applicable, enforce Federal consumer financial law consistently for the purpose of ensuring that markets for consumer financial products and services are fair, transparent, and competitive.

(b) OBJECTIVES.—The Bureau is authorized to exercise its authorities under Federal consumer financial law for the purposes of ensuring that, with respect to consumer financial products and services—

(1) consumers are provided with timely and understandable information to make responsible decisions about financial transactions;

(2) consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination;

(3) outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens;

(4) Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and

(5) markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

(c) FUNCTIONS.—The primary functions of the Bureau are—

(1) conducting financial education programs;

(2) collecting, investigating, and responding to consumer complaints;

(3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets;

(4) subject to sections 1024 through 1026, supervising covered persons for compliance with Federal consumer financial law, and taking appropriate enforcement action to address violations of Federal consumer financial law;

(5) issuing rules, orders, and guidance implementing Federal consumer financial law; and

(6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.

SEC. 1022. RULEMAKING AUTHORITY.

(a) IN GENERAL.—The Bureau is authorized to exercise its authorities under Federal consumer financial law to administer, enforce, and otherwise implement the provisions of Federal consumer financial law.

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) GENERAL AUTHORITY.—The Director may prescribe rules and issue orders and guidance, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule;

(B) the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies; and

(C) if, during the consultation process described in subparagraph (B), a prudential regulator provides the Bureau with a written objection to the proposed rule of the Bureau or a portion thereof, the Bureau shall include in the adopting release a description of the objection and the basis for the Bureau decision, if any, regarding such objection, except that nothing in this clause shall be construed as altering or limiting the procedures under section 1023 that may apply to any rule prescribed by the Bureau.

(3) EXEMPTIONS.—

(A) IN GENERAL.—The Bureau, by rule, may conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services, from any provision of this title, or from any rule issued under this title, as the Bureau determines necessary or appropriate to carry out the purposes and objectives of this title, taking into consideration the factors in subparagraph (B).

(B) FACTORS.—In issuing an exemption, as permitted under subparagraph (A), the Bureau shall, as appropriate, take into consideration—

(i) the total assets of the class of covered persons;

(ii) the volume of transactions involving consumer financial products or services in which the class of covered persons engages; and

(iii) existing provisions of law which are applicable to the consumer financial product or service and the extent to which such provisions provide consumers with adequate protections.

(4) EXCLUSIVE RULEMAKING AUTHORITY.—Notwithstanding any other provisions of Federal law, to the extent that a provision of Federal consumer financial law authorizes the Bureau and another Federal agency to issue regulations under that provision of law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules subject to those provisions of law.

(c) MONITORING.—

(1) IN GENERAL.—In order to support its rulemaking and other functions, the Bureau shall monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

(2) CONSIDERATIONS.—In allocating its resources to perform the monitoring required by this section, the Bureau may consider, among other factors—

(A) likely risks and costs to consumers associated with buying or using a type of consumer financial product or service;

(B) understanding by consumers of the risks of a type of consumer financial product or service;

(C) the legal protections applicable to the offering or provision of a consumer financial product or service, including the extent to which the law is likely to adequately protect consumers;

(D) rates of growth in the offering or provision of a consumer financial product or service;

(E) the extent, if any, to which the risks of a consumer financial product or service may disproportionately affect traditionally underserved consumers; or

(F) the types, number, and other pertinent characteristics of covered persons that offer or provide the consumer financial product or service.

(3) REPORTS.—The Bureau shall publish not fewer than 1 report of significant findings of its monitoring required by this subsection in each calendar year, beginning with the first calendar year that begins at least 1 year after the designated transfer date.

(4) CONFIDENTIALITY RULES.—The Bureau shall prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

(A) ACCESS BY THE BUREAU TO REPORTS OF OTHER REGULATORS.—

(i) EXAMINATION AND FINANCIAL CONDITION REPORTS.—Upon providing reasonable assurances of confidentiality, the Bureau shall have access to any report of examination or financial condition made by a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO THE BUREAU.—In addition to the reports described in clause (i), a prudential regulator or other Federal agency having jurisdiction over a covered person or service provider may, in its discretion, furnish to the Bureau any other report or other confidential supervisory information concerning any insured depository institution, credit union, or other entity examined by such agency under authority of any provision of Federal law.

(B) ACCESS BY OTHER REGULATORS TO REPORTS OF THE BUREAU.—

(i) EXAMINATION REPORTS.—Upon providing reasonable assurances of confidentiality, a prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider shall have access to any report of examination made by the Bureau with respect to such person, and to all revisions made to any such report.

(ii) PROVISION OF OTHER REPORTS TO OTHER REGULATORS.—In addition to the reports described in clause (i), the Bureau may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.

(5) PRIVACY CONSIDERATIONS.—In collecting information from any person, publicly releasing information held by the Bureau, or requiring covered persons to publicly report information, the Bureau shall take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.

(d) ASSESSMENT OF SIGNIFICANT RULES.—

(1) IN GENERAL.—The Bureau shall conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law. The assessment shall address, among other relevant factors, the effectiveness of the rule or order in meeting the purposes and objectives of this title and the specific goals stated by the Bureau. The assessment shall reflect available evidence and any data that the Bureau reasonably may collect.

(2) REPORTS.—The Bureau shall publish a report of its assessment under this subsection not later than 5 years after the effective date of the subject rule or order.

(3) PUBLIC COMMENT REQUIRED.—Before publishing a report of its assessment, the Bureau shall invite public comment on recommendations for modifying, expanding, or eliminating the newly adopted significant rule or order.

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council may set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(b) PETITION.—

(1) PROCEDURE.—An agency represented by a member of the Council may petition the Council, in writing, and in accordance with rules prescribed pursuant to subsection (f), to stay the effectiveness of, or set aside, a regulation if the member agency filing the petition—

(A) has in good faith attempted to work with the Bureau to resolve concerns regarding the effect of the rule on the safety and soundness of the United States banking system or the stability of the financial system of the United States; and

(B) files the petition with the Council not later than 10 days after the date on which the regulation has been

(C) published in the Federal Register.

(2) PUBLICATION.—Any petition filed with the Council under this section shall be published in the Federal Register and transmitted contemporaneously with filing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) STAYS AND SET ASIDES.—

(1) STAY.—

(A) IN GENERAL.—Upon the request of any member agency, the Chairperson of the Council may stay the effectiveness of a regulation for the purpose of allowing appropriate consideration of the petition by the Council.

(B) EXPIRATION.—A stay issued under this paragraph shall expire on the earlier of—

(i) 90 days after the date of filing of the petition under subsection (b); or

(ii) the date on which the Council makes a decision under paragraph (3).

(2) NO ADVERSE INFERENCE.—After the expiration of any stay imposed under this section, no inference shall be drawn regarding the validity or enforceability of a regulation which was the subject of the petition.

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of ⅔ of the members of the Council then serving.

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) considered any relevant information provided by the agency submitting the petition and by the Bureau; and

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.

(4) DECISIONS TO SET ASIDE.—

(A) EFFECT OF DECISION.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall render such regulation, or provision thereof, unenforceable.

(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

(ii) the expiration of a stay issued by the Council under this section.

(C) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).

(6) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

(7) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

(8) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(d) APPLICATION OF OTHER LAW.—Nothing in this section shall be construed as altering, limiting, or restricting the application of any other provision of law, except as otherwise specifically provided in this section, including chapter 5 and chapter 7 of title 5, United States Code, to a regulation which is the subject of a petition filed under this section.

(e) SAVINGS CLAUSE.—Nothing in this section shall be construed as limiting or restricting the Bureau from engaging in a rulemaking in accordance with applicable law.

(f) IMPLEMENTING RULES.—The Council shall prescribe procedural rules to implement this section.

SEC. 1024. SUPERVISION OF NONDEPOSITORY COVERED PERSONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—Notwithstanding any other provision of this title, and except as provided in paragraph (3), this section shall apply to any covered person who—

(A) offers or provides origination, brokerage, or servicing of loans secured by real estate for use by consumers primarily for personal, family, or household purposes, or loan modification or foreclosure relief services in connection with such loans; or

(B) is a larger participant of a market for other consumer financial products or services, as defined by rule in accordance with paragraph (2).

(2) RULEMAKING TO DEFINE COVERED PERSONS SUBJECT TO THIS SECTION.—The Bureau shall consult with the Federal Trade Commission prior to issuing a rule to define covered persons subject to this section, in accordance with paragraph (1)(B). The Bureau shall issue its initial rule within 1 year of the designated transfer date.

(3) RULES OF CONSTRUCTION.—

(A) CERTAIN PERSONS EXCLUDED.—This section shall not apply to persons described in section 1025(a) or 1026(a).

(B) ACTIVITY LEVELS.—For purposes of computing activity levels under paragraph (1) or rules issued thereunder, activities of affiliated companies (other than insured depository institutions or insured credit unions) shall be aggregated.

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial law;

(B) obtaining information about the activities and compliance systems or procedures of such person; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) RISK-BASED SUPERVISION PROGRAM.—The Bureau shall exercise its authority under paragraph (1) in a manner designed to ensure that such exercise, with respect to persons described in subsection (a), is based on the assessment by the Bureau of the risks posed to consumers in the relevant product markets and geographic markets, and taking into consideration, as applicable—

(A) the asset size of the covered person;

(B) the volume of transactions involving consumer financial products or services in which the covered person engages;

(C) the risks to consumers created by the provision of such consumer financial products or services;

(D) the extent to which such institutions are subject to oversight by State authorities for consumer protection; and

(E) any other factors that the Bureau determines to be relevant to a class of covered persons.

(3) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(4) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to persons described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(5) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from persons described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(6) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(7) REGISTRATION, RECORDKEEPING, AND OTHER REQUIREMENTS FOR CERTAIN PERSONS.—

(A) IN GENERAL.—The Bureau shall prescribe rules to facilitate supervision of persons described in subsection (a) and assessment and detection of risks to consumers.

(B) REGISTRATION.—

(i) IN GENERAL.—The Bureau shall prescribe rules regarding registration requirements for persons described in subsection (a).

(ii) EXCEPTION FOR RELATED PERSONS.—The Bureau may not impose requirements under this section regarding the registration of a related person.

(iii) REGISTRATION INFORMATION.—Subject to rules prescribed by the Bureau, the Bureau shall publicly disclose the registration information about persons described in subsection (a) to facilitate the ability of consumers to identify persons described in subsection (a) registered with the Bureau.

(C) RECORDKEEPING.—The Bureau may require a person described in subsection (a), to

generate, provide, or retain records for the purposes of facilitating supervision of such persons and assessing and detecting risks to consumers.

(D) REQUIREMENTS CONCERNING OBLIGATIONS.—The Bureau may prescribe rules regarding a person described in subsection (a), to ensure that such persons are legitimate entities and are able to perform their obligations to consumers. Such requirements may include background checks for principals, officers, directors, or key personnel and bonding or other appropriate financial requirements.

(E) CONSULTATION WITH STATE AGENCIES.—In developing and implementing requirements under this paragraph, the Bureau shall consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.

(c) EXCLUSIVE ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE EXCLUSIVE ENFORCEMENT AUTHORITY.—To the extent that Federal law authorizes the Bureau and another Federal agency to enforce Federal consumer financial law, the Bureau shall have exclusive authority to enforce that Federal consumer financial law with respect to any person described in subsection (a)(1)(B).

(2) REFERRAL.—Any Federal agency authorized to enforce a Federal consumer financial law described in paragraph (1) may recommend in writing to the Bureau that the Bureau initiate an enforcement proceeding, as the Bureau is authorized by that Federal law or by this title.

(3) COORDINATION WITH THE FEDERAL TRADE COMMISSION.—

(A) IN GENERAL.—The Bureau and the Federal Trade Commission shall coordinate enforcement actions for violations of Federal law regarding the offering or provision of consumer financial products or services by any covered person that is described in subsection (a)(1)(A), or service providers thereto. In carrying out this subparagraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for notice to the other agency, where feasible, prior to initiating a civil action to enforce a Federal law regarding the offering or provision of consumer financial products or services.

(B) CIVIL ACTIONS.—Whenever a civil action has been filed by, or on behalf of, the Bureau or the Federal Trade Commission for any violation of any provision of Federal law described in subparagraph (A), or any regulation prescribed under such provision of law—

(i) the other agency may not, during the pendency of that action, institute a civil action under such provision of law against any defendant named in the complaint in such pending action for any violation alleged in the complaint; and

(ii) the Bureau or the Federal Trade Commission may intervene as a party in any such action brought by the other agency, and, upon intervening—

(I) be heard on all matters arising in such enforcement action; and

(II) file petitions for appeal in such actions.

(C) AGREEMENT TERMS.—The terms of any agreement negotiated under subparagraph (A) may modify or supersede the provisions of subparagraph (B).

(D) DEADLINE.—The agencies shall reach the agreement required under subparagraph (A) not later than 6 months after the designated transfer date.

(d) EXCLUSIVE RULEMAKING AND EXAMINATION AUTHORITY.—Notwithstanding any other provision of Federal law, to the extent that Federal law authorizes the Bureau and another Federal agency to issue regulations or guidance, conduct examinations, or require reports from a person described in subsection (a) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to prescribe rules, issue guidance, conduct examinations, require reports, or issue exemptions with regard to a person described in subsection (a), subject to those provisions of law.

(e) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if such service provider were engaged in a service relationship with a bank, and the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator, as applicable.

(f) PRESERVATION OF FARM CREDIT ADMINISTRATION AUTHORITY.—No provision of this title may be construed as modifying, limiting, or otherwise affecting the authority of the Farm Credit Administration.

SEC. 1025. SUPERVISION OF VERY LARGE BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—

(1) APPLICABILITY.—This section shall apply to any covered person that is—

(A) an insured depository institution with total assets of more than $10,000,000,000 and any affiliate thereof; or

(B) an insured credit union with total assets of more than $10,000,000,000 and any affiliate thereof.

(2) RULE OF CONSTRUCTION.—For purposes of determining total assets under this section and section 1026, the Bureau shall rely on the same regulations and interim methodologies specified in section 312(e).

(b) SUPERVISION.—

(1) IN GENERAL.—The Bureau shall require reports and conduct examinations on a periodic basis of persons described in subsection (a) for purposes of—

(A) assessing compliance with the requirements of Federal consumer financial laws;

(B) obtaining information about the activities and compliance systems or procedures of such persons; and

(C) detecting and assessing risks to consumers and to markets for consumer financial products and services.

(2) COORDINATION.—To minimize regulatory burden, the Bureau shall coordinate its supervisory activities with the supervisory activities conducted by prudential regulators and the State bank regulatory authorities, including establishing their respective schedules for examining such persons described in subsection (a) and requirements regarding reports to be submitted by such persons.

(3) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(4) PRESERVATION OF AUTHORITY.—Nothing in this title may be construed as limiting the authority of the Director to require reports from a person described in subsection (a), as permitted under paragraph (1), regarding information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(5) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) PRIMARY ENFORCEMENT AUTHORITY.—

(1) THE BUREAU TO HAVE PRIMARY ENFORCEMENT AUTHORITY.—To the extent that the Bureau and another Federal agency are authorized to enforce a Federal consumer financial law, the Bureau shall have primary authority to enforce that Federal consumer financial law with respect to any person described in subsection (a).

(2) REFERRAL.—Any Federal agency, other than the Federal Trade Commission, that is authorized to enforce a Federal consumer financial law may recommend, in writing, to the Bureau that the Bureau initiate an enforcement proceeding with respect to a person described in subsection (a), as the Bureau is authorized to do by that Federal consumer financial law.

(3) BACKUP ENFORCEMENT AUTHORITY OF OTHER FEDERAL AGENCY.—If the Bureau does not, before the end of the 120-day period beginning on the date on which the Bureau receives a recommendation under paragraph (2), initiate an enforcement proceeding, the other agency referred to in paragraph (2) may initiate an enforcement proceeding, as permitted by the subject provision of Federal law.

(d) SERVICE PROVIDERS.—A service provider to a person described in subsection (a) shall be subject to the authority of the Bureau under this section, to the same extent as if the Bureau were an appropriate Federal banking agency under section 7(c) of the Bank Service Company Act 12 U.S.C. 1867(c). In conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

(e) SIMULTANEOUS AND COORDINATED SUPERVISORY ACTION.—

(1) EXAMINATIONS.—A prudential regulator and the Bureau shall, with respect to each insured depository institution, insured credit union, or other covered person described in subsection (a) that is supervised by the prudential regulator and the Bureau, respectively—

(A) coordinate the scheduling of examinations of the insured depository institution, insured credit union, or other covered person described in subsection (a);

(B) conduct simultaneous examinations of each insured depository institution, insured credit union, or other covered person described in subsection (a), unless such institution requests examinations to be conducted separately;

(C) share each draft report of examination with the other agency and permit the receiving agency a reasonable opportunity (which shall not be less than a period of 30 days after the date of receipt) to comment on the draft report before such report is made final; and

(D) prior to issuing a final report of examination or taking supervisory action, take into consideration concerns, if any, raised in the comments made by the other agency.

(2) COORDINATION WITH STATE BANK SUPERVISORS.—The Bureau shall pursue arrangements and agreements with State bank supervisors to coordinate examinations, consistent with paragraph (1).

(3) AVOIDANCE OF CONFLICT IN SUPERVISION.—

(A) REQUEST.—If the proposed supervisory determinations of the Bureau and a prudential regulator (in this section referred to collectively as the ''agencies'') are conflicting, an insured depository institution, insured credit union, or other covered person described in subsection (a) may request the agencies to coordinate and present a joint statement of coordinated supervisory action.

(B) JOINT STATEMENT.—The agencies shall provide a joint statement under subparagraph (A), not later than 30 days after the date of receipt of the request of the insured depository institution, credit union, or covered person described in subsection (a).

(4) APPEALS TO GOVERNING PANEL.—

(A) IN GENERAL.—If the agencies do not resolve the conflict or issue a joint statement required by subparagraph (B), or if either of the agencies takes or attempts to take any supervisory action relating to the request for the joint statement without the consent of the other agency, an insured depository institution, insured credit union, or other covered person described in subsection (a) may institute an appeal to a governing panel, as provided in this subsection, not later than 30 days after the expiration of the period during which a joint statement is required to be filed under paragraph (3)(B).

(B) COMPOSITION OF GOVERNING PANEL.—The governing panel for an appeal under this paragraph shall be composed of—

(i) a representative from the Bureau and a representative of the prudential regulator, both of whom—

(I) have not participated in the material supervisory determinations under appeal; and

(II) do not directly or indirectly report to the person who participated materially in the supervisory determinations under appeal; and

(ii) one individual representative, to be determined on a rotating basis, from among the Board of Governors, the Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency, other than any agency involved in the subject dispute.

(C) CONDUCT OF APPEAL.—In an appeal under this paragraph—

(i) the insured depository institution, insured credit union, or other covered person described in subsection (a)—

(I) shall include in its appeal all the facts and legal arguments pertaining to the matter; and

(II) may, through counsel, employees, or representatives, appear before the governing panel in person or by telephone; and

(ii) the governing panel—

(I) may request the insured depository institution, insured credit union, or other covered person described in subsection (a), the Bureau, or the prudential regulator to produce additional information relevant to the appeal; and

(II) by a majority vote of its members, shall provide a final determination, in writing, not later than 30 days after the date of filing of an informationally complete appeal, or such longer period as the panel and the insured depository institution, insured credit union, or other covered person described in subsection (a) may jointly agree.

(D) PUBLIC AVAILABILITY OF DETERMINATIONS.—A governing panel shall publish all information contained in a determination by the governing panel, with appropriate redactions of information that would be subject to an exemption from disclosure under section 552 of title 5, United States Code.

(E) PROHIBITION AGAINST RETALIATION.—The Bureau and the prudential regulators shall prescribe rules to provide safeguards from retaliation against the insured depository institution, insured credit union, or other covered person described in subsection (a) instituting an appeal under this paragraph, as well as their officers and employees.

(F) LIMITATION.—The process provided in this paragraph shall not apply to a determination by a prudential regulator to appoint a conservator or receiver for an insured depository institution or a liquidating agent for an insured credit union, as the case may be, or a decision to take action pursuant to section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) or section 212 of the Federal Credit Union Act (112 U.S.C. 1790a), as applicable.

(G) EFFECT ON OTHER AUTHORITY.—Nothing in this section shall modify or limit the authority of the Bureau to interpret, or take enforcement action under, any Federal consumer financial law.

SEC. 1026. OTHER BANKS, SAVINGS ASSOCIATIONS, AND CREDIT UNIONS.

(a) SCOPE OF COVERAGE.—This section shall apply to any covered person that is—

(1) an insured depository institution with total assets of $10,000,000,000 or less; or

(2) an insured credit union with total assets of $10,000,000,000 or less.

(b) REPORTS.—The Director may require reports from a person described in subsection (a), as necessary to support the role of the Bureau in implementing Federal consumer financial law, to support its examination activities under subsection (c), and to assess and detect risks to consumers and consumer financial markets.

(1) USE OF EXISTING REPORTS.—The Bureau shall, to the fullest extent possible, use—

(A) reports pertaining to a person described in subsection (a) that have been provided or required to have been provided to a Federal or State agency; and

(B) information that has been reported publicly.

(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection may be construed as limiting the authority of the Director from requiring from a person described in subsection (a), as permitted under paragraph (1), information owned or under the control of such person, regardless of whether such information is maintained, stored, or processed by another person.

(3) REPORTS OF TAX LAW NONCOMPLIANCE.—The Bureau shall provide the Commissioner of Internal Revenue with any report of examination or related information identifying possible tax law noncompliance.

(c) EXAMINATIONS.—

(1) IN GENERAL.—The Bureau may, at its discretion, include examiners on a sampling basis of the examinations performed by the prudential regulator of persons described in subsection (a).

(2) AGENCY COORDINATION.—The prudential regulator shall—

(A) provide all reports, records, and documentation related to the examination process for any institution included in the sample referred to in paragraph (1) to the Bureau on a timely and continual basis;

(B) involve such Bureau examiner in the entire examination process for such person; and

(C) consider input of the Bureau concerning the scope of an examination, conduct of the examination, the contents of the examination report, the designation of matters requiring attention, and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Except for requiring reports under subsection (b), the prudential regulator shall have exclusive authority to enforce compliance with respect to a person described in subsection (a).

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—When the Bureau has reason to believe that a person described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau shall notify the prudential regulator in writing and recommend appropriate action to respond.

(B) RESPONSE.—Upon receiving a recommendation under subparagraph (A), the prudential regulator shall provide a written response to the Bureau not later than 60 days thereafter.

(e) SERVICE PROVIDERS.—A service provider to a substantial number of persons described in subsection (a) shall be subject to the authority of the Bureau under section 1025 to the same extent as if the Bureau were an appropriate Federal bank agency under section 7(c) of the Bank Service Company Act (12 U.S.C. 1867(c)). When conducting any examination or requiring any report from a service provider subject to this subsection, the Bureau shall coordinate with the appropriate prudential regulator.

SEC. 1027. LIMITATIONS ON AUTHORITIES OF THE BUREAU; PRESERVATION OF AUTHORITIES.

(a) EXCLUSION FOR MERCHANTS, RETAILERS, AND OTHER SELLERS OF NONFINANCIAL GOODS OR SERVICES.—

(1) SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—The Bureau may not exercise any rulemaking, supervisory, enforcement or other authority under this title with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service and is engaged in the sale or brokerage of such nonfinancial good or service, except to the extent that such person is engaged in offering or providing any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(2) OFFERING OR PROVISION OF CERTAIN CONSUMER FINANCIAL PRODUCTS OR SERVICES IN CONNECTION WITH THE SALE OR BROKERAGE OF NONFINANCIAL GOOD OR SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), and subject to subparagraph (C), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services who—

(i) extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service (other than credit described in this subparagraph), exclusively for the purpose of enabling that consumer to purchase such nonfinancial good or service directly from the merchant, retailer, or seller;

(ii) directly, or through an agreement with another person, collects debt arising from credit extended as described in clause (i); or

(iii) sells or conveys debt described in clause (i) that is delinquent or otherwise in default.

(B) APPLICABILITY.—Subparagraph (A) does not apply to any credit transaction or collection of debt, other than as described in subparagraph (C), arising from a transaction described in subparagraph (A)—

(i) in which the merchant, retailer, or seller of nonfinancial goods or services assigns, sells or otherwise conveys to another person such debt owed by the consumer (except for a sale of debt that is delinquent or otherwise in default, as described in subparagraph (A)(iii));

(ii) in which the credit extended exceeds the market value of the nonfinancial good or service provided, or the Bureau otherwise finds that the sale of the nonfinancial good or service is done as a subterfuge, so as to evade or circumvent the provisions of this title; or

(iii) in which the merchant, retailer, or seller of nonfinancial goods or services regularly extends credit and the credit is—

(I) subject to a finance charge; or

(II) payable by written agreement in more than 4 installments.

(C) LIMITATION.—Notwithstanding subparagraph (B), the Bureau may not exercise any rulemaking, supervisory, enforcement, or

other authority under this title with respect to a merchant, retailer, or seller of nonfinancial goods or services that is not engaged significantly in offering or providing consumer financial products or services.

(D) RULE OF CONSTRUCTION.—No provision of this title may be construed as modifying, limiting, or superseding the supervisory or enforcement authority of the Federal Trade Commission or any other agency (other than the Bureau) with respect to credit extended, or the collection of debt arising from such extension, directly by a merchant or retailer to a consumer exclusively for the purpose of enabling that consumer to purchase nonfinancial goods or services directly from the merchant or retailer.

(b) EXCLUSION FOR REAL ESTATE BROKERAGE ACTIVITIES.—

(1) REAL ESTATE BROKERAGE ACTIVITIES EXCLUDED.—Without limiting subsection (a), and except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority under this title with respect to a person that is licensed or registered as a real estate broker or real estate agent, in accordance with State law, to the extent that such person—

(A) acts as a real estate agent or broker for a buyer, seller, lessor, or lessee of real property;

(B) brings together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(C) negotiates, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with the provision of financing with respect to any such transaction); or

(D) offers to engage in any activity, or act in any capacity, described in subparagraph (A), (B), or (C).

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(c) EXCLUSION FOR MANUFACTURED HOME RETAILERS AND MODULAR HOME RETAILERS.—

(1) IN GENERAL.—The Director may not exercise any rulemaking, supervisory, enforcement, or other authority over a person to the extent that—

(A) such person is not described in paragraph (2); and

(B) such person—

(i) acts as an agent or broker for a buyer or seller of a manufactured home or a modular home;

(ii) facilitates the purchase by a consumer of a manufactured home or modular home, by negotiating the purchase price or terms of the sales contract (other than providing financing with respect to such transaction); or

(iii) offers to engage in any activity described in clause (i) or (ii).

(2) DESCRIPTION OF ACTIVITIES.—A person is described in this paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

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

(A) MANUFACTURED HOME.—The term ''manufactured home'' has the same meaning as in section 603 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5402).

(B) MODULAR HOME.—The term ''modular home'' means a house built in a factory in 2 or more modules that meet the State or local building codes where the house will be located, and where such modules are transported to the building site, installed on foundations, and completed.

(d) EXCLUSION FOR ACCOUNTANTS AND TAX PREPARERS.—

(1) IN GENERAL.—Except as permitted in paragraph (2), the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority over—

(A) any person that is a certified public accountant, permitted to practice as a certified public accounting firm, or certified or licensed for such purpose by a State, or any individual who is employed by or holds an ownership interest with respect to a person described in this subparagraph, when such person is performing or offering to perform—

(i) customary and usual accounting activities, including the provision of accounting, tax, advisory, or other services that are subject to the regulatory authority of a State board of accountancy or a Federal authority; or

(ii) other services that are incidental to such customary and usual accounting activities, to the extent that such incidental services are not offered or provided—

(I) by the person separate and apart from such customary and usual accounting activities; or

(II) to consumers who are not receiving such customary and usual accounting activities; or

(B) any person, other than a person described in subparagraph (A) that performs income tax preparation activities for consumers.

(2) DESCRIPTION OF ACTIVITIES.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any person described in paragraph (1)(A) or (1)(B) to the extent that such person is engaged in any activity which is not a customary and usual accounting activity described in paragraph (1)(A) or incidental thereto but which is the offering or provision of any consumer financial product or service, except to the extent that a person described in paragraph (1)(A) is engaged in an activity which is a customary and usual accounting activity described in paragraph (1)(A), or incidental thereto.

(B) NOT A CUSTOMARY AND USUAL ACCOUNTING ACTIVITY.—For purposes of this subsection, extending or brokering credit is not a customary and usual accounting activity, or incidental thereto.

(C) RULE OF CONSTRUCTION.—For purposes of subparagraphs (A) and (B), a person described in paragraph (1)(A) shall not be deemed to be extending credit, if such person is only extending credit directly to a consumer, exclusively for the purpose of enabling such consumer to purchase services described in clause (i) or (ii) of paragraph (1)(A) directly from such person, and such credit is—

(i) not subject to a finance charge; and

(ii) not payable by written agreement in more than 4 installments.

(D) OTHER LIMITATIONS.—Paragraph (1) does not apply to any person described in paragraph (1)(A) or (1)(B) that is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(e) EXCLUSION FOR ATTORNEYS.—

(1) IN GENERAL.—The Bureau may not exercise any authority to conduct examinations of an attorney licensed by a State, to the extent that the attorney is engaged in the practice of law under the laws of such State.

(2) EXCEPTION FOR ENUMERATED CONSUMER LAWS AND TRANSFERRED AUTHORITIES.—Paragraph (1) shall not apply to an attorney who is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(f) 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 a State insurance regulator. Except as provided in paragraph (2), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by a State insurance regulator.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) does not apply to any person described in such paragraph to the extent that such person is engaged in the offering or provision of any consumer financial product or service or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(g) EXCLUSION FOR EMPLOYEE BENEFIT AND COMPENSATION PLANS AND CERTAIN OTHER ARRANGEMENTS UNDER THE INTERNAL REVENUE CODE OF 1986.—

(1) PRESERVATION OF AUTHORITY OF OTHER AGENCIES.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Secretary of the Treasury, the Secretary of Labor, or the Commissioner of Internal Revenue to adopt regulations, initiate enforcement proceedings, or take any actions with respect to any specified plan or arrangement.

(2) ACTIVITIES NOT CONSTITUTING THE OFFERING OR PROVISION OF ANY CONSUMER FINANCIAL PRODUCT OR SERVICE.—For purposes of this title, a person shall not be treated as having engaged in the offering or provision of any consumer financial product or service solely because such person is a specified plan or arrangement, or is engaged in the activity of establishing or maintaining, for the benefit of employees of such person (or for members of an employee organization), any specified plan or arrangement.

(3) LIMITATION ON BUREAU AUTHORITY.—

(A) IN GENERAL.—Except as provided under subparagraphs (B) and (C), the Bureau may not exercise any rulemaking or enforcement authority with respect to products or services that relate to any specified plan or arrangement.

(B) BUREAU ACTION ONLY PURSUANT TO AGENCY REQUEST.—The Secretary and the Secretary of Labor may jointly issue a written request to the Bureau regarding implementation of appropriate consumer protection standards under this title with respect to the provision of services relating to any specified plan or arrangement. Subject to a request made under this subparagraph, the Bureau may exercise rulemaking authority, and may act to enforce a rule prescribed pursuant to such request, in accordance with the provisions of this title. A request made by the Secretary and the Secretary of Labor under this subparagraph shall describe the basis for, and scope of, appropriate consumer protection standards to be implemented under this title with respect to the provision of services relating to any specified plan or arrangement.

(C) DESCRIPTION OF PRODUCTS OR SERVICES.—To the extent that a person engaged in providing products or services relating to any specified plan or arrangement is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H, subparagraph (A) shall not apply with respect to that law.

(4) SPECIFIED PLAN OR ARRANGEMENT.—For purposes of this subsection, the term ''specified plan or arrangement'' means any plan, account, or arrangement described in section

220, 223, 401(a), 403(a), 403(b), 408, 408A, 529, or 530 of the Internal Revenue Code of 1986, or any employee benefit or compensation plan or arrangement, including a plan that is subject to title I of the Employee Retirement Income Security Act of 1974.

(h) PERSONS REGULATED BY A STATE SECURITIES COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of any securities commission (or any agency or office performing like functions) of any State to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State. Except as permitted in paragraph (2) and subsection (f), the Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by any securities commission (or any agency or office performing like functions) of any State, but only to the extent that the person acts in such regulated capacity.

(2) DESCRIPTION OF ACTIVITIES.—Paragraph (1) shall not apply to any person to the extent such person is engaged in the offering or provision of any consumer financial product or service, or is otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(i) EXCLUSION FOR PERSONS REGULATED BY THE COMMISSION.—

(1) IN GENERAL.—No provision of this title may be construed as altering, amending, or affecting the authority of the Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commission shall consult and coordinate, where feasible, with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding an investment product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law. In carrying out this paragraph, the agencies shall negotiate an agreement to establish procedures for such coordination, including procedures for providing advance notice to the Bureau when the Commission is initiating a rulemaking.

(j) EXCLUSION FOR PERSONS REGULATED BY THE COMMODITY FUTURES TRADING COMMISSION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Commodity Futures Trading Commission to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Commodity Futures Trading Commission. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Commodity Futures Trading Commission.

(2) CONSULTATION AND COORDINATION.—Notwithstanding paragraph (1), the Commodity Futures Trading Commission shall consult and coordinate with the Bureau with respect to any rule (including any advance notice of proposed rulemaking) regarding a product or service that is the same type of product as, or that competes directly with, a consumer financial product or service that is subject to the jurisdiction of the Bureau under this title or under any other law.

(k) EXCLUSION FOR PERSONS REGULATED BY THE FARM CREDIT ADMINISTRATION.—

(1) IN GENERAL.—No provision of this title shall be construed as altering, amending, or affecting the authority of the Farm Credit Administration to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by the Farm Credit Administration. The Bureau shall have no authority to exercise any power to enforce this title with respect to a person regulated by the Farm Credit Administration.

(2) DEFINITION.—For purposes of this subsection, the term ''person regulated by the Farm Credit Administration'' means any Farm Credit System institution that is chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.).

(l) EXCLUSION FOR ACTIVITIES RELATING TO CHARITABLE CONTRIBUTIONS.—

(1) IN GENERAL.—The Director and the Bureau may not exercise any rulemaking, supervisory, enforcement, or other authority, including authority to order penalties, over any activities related to the solicitation or making of voluntary contributions to a tax-exempt organization as recognized by the Internal Revenue Service, by any agent, volunteer, or representative of such organizations to the extent the organization, agent, volunteer, or representative thereof is soliciting or providing advice, information, education, or instruction to any donor or potential donor relating to a contribution to the organization.

(2) LIMITATION.—The exclusion in paragraph (1) does not apply to other activities not described in paragraph (1) that are the offering or provision of any consumer financial product or service, or are otherwise subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.

(m) INSURANCE.—The Bureau may not define as a financial product or service, by regulation or otherwise, engaging in the business of insurance.

(n) LIMITED AUTHORITY OF THE BUREAU.—Notwithstanding subsections (a) through (h) and (l), a person subject to or described in one or more of such subsections—

(1) may be a service provider; and

(2) may be subject to requests from, or requirements imposed by, the Bureau regarding information in order to carry out the responsibilities and functions of the Bureau and in accordance with section 1022, 1052, or 1053.

(o) NO AUTHORITY TO IMPOSE USURY LIMIT.—No provision of this title shall be construed as conferring authority on the Bureau to establish a usury limit applicable to an extension of credit offered or made by a covered person to a consumer, unless explicitly authorized by law.

(p) ATTORNEY GENERAL.—No provision of this title, including section 1024(c)(1), shall affect the authorities of the Attorney General under otherwise applicable provisions of law.

(q) SECRETARY OF THE TREASURY.—No provision of this title shall affect the authorities of the Secretary, including with respect to prescribing rules, initiating enforcement proceedings, or taking other actions with respect to a person that performs income tax preparation activities for consumers.

(r) DEPOSIT INSURANCE AND SHARE INSURANCE.—Nothing in this title shall affect the authority of the Corporation under the Federal Deposit Insurance Act or the National Credit Union Administration Board under the Federal Credit Union Act as to matters related to deposit insurance and share insurance, respectively.

SEC. 1028. AUTHORITY TO RESTRICT MANDATORY PRE-DISPUTE ARBITRATION.

(a) STUDY AND REPORT.—The Bureau shall conduct a study of, and shall provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services.

(b) FURTHER AUTHORITY.—The Bureau, by regulation, may prohibit or impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers. The findings in such rule shall be consistent with the study conducted under subsection (a).

(c) LIMITATION.—The authority described in subsection (b) may not be construed to prohibit or restrict a consumer from entering into a voluntary arbitration agreement with a covered person after a dispute has arisen.

(d) EFFECTIVE DATE.—Notwithstanding any other provision of law, any regulation prescribed by the Bureau under subsection (a) shall apply, consistent with the terms of the regulation, to any agreement between a consumer and a covered person entered into after the end of the 180-day period beginning on the effective date of the regulation, as established by the Bureau.

SEC. 1029. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle C—Specific Bureau Authorities

SEC. 1031. PROHIBITING UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES.

(a) IN GENERAL.—The Bureau may take any action authorized under subtitle E to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under Federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.

(b) RULEMAKING.—The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service. Rules under this section may include requirements for the purpose of preventing such acts or practices.

(c) UNFAIRNESS.—

(1) IN GENERAL.—The Bureau 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, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that—

(A) the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and

(B) such substantial injury is not outweighed by countervailing benefits to consumers or to competition.

(2) CONSIDERATION OF PUBLIC POLICIES.—In determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(d) ABUSIVE.—The Bureau shall have no authority under this section to declare an act

or practice abusive in connection with the provision of a consumer financial product or service, unless the act or practice—

(1) materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service; or

(2) takes unreasonable advantage of—

(A) a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service;

(B) the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service; or

(C) the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

(e) CONSULTATION.—In prescribing rules under this section, the Bureau shall consult with the Federal banking agencies, or other Federal agencies, as appropriate, concerning the consistency of the proposed rule with prudential, market, or systemic objectives administered by such agencies.

SEC. 1032. DISCLOSURES.

(a) IN GENERAL.—The Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

(b) MODEL DISCLOSURES.—

(1) IN GENERAL.—Any final rule prescribed by the Bureau under this section requiring disclosures may include a model form that may be used at the option of the covered person for provision of the required disclosures.

(2) FORMAT.—A model form issued pursuant to paragraph (1) shall contain a clear and conspicuous disclosure that, at a minimum—

(A) uses plain language comprehensible to consumers;

(B) contains a clear format and design, such as an easily readable type font; and

(C) succinctly explains the information that must be communicated to the consumer.

(3) CONSUMER TESTING.—Any model form issued pursuant to this subsection shall be validated through consumer testing.

(c) BASIS FOR RULEMAKING.—In prescribing rules under this section, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.

(d) SAFE HARBOR.—Any covered person that uses a model form included with a rule issued under this section shall be deemed to be in compliance with the disclosure requirements of this section with respect to such model form.

(e) TRIAL DISCLOSURE PROGRAMS.—

(1) IN GENERAL.—The Bureau may permit a covered person to conduct a trial program that is limited in time and scope, subject to specified standards and procedures, for the purpose of providing trial disclosures to consumers that are designed to improve upon any model form issued pursuant to subsection (b)(1), or any other model form issued to implement an enumerated statute, as applicable.

(2) SAFE HARBOR.—The standards and procedures issued by the Bureau shall be designed to encourage covered persons to conduct trial disclosure programs. For the purposes of administering this subsection, the Bureau may establish a limited period during which a covered person conducting a trial disclosure program shall be deemed to be in compliance with, or may be exempted from, a requirement of a rule or an enumerated consumer law.

(3) PUBLIC DISCLOSURE.—The rules of the Bureau shall provide for public disclosure of trial disclosure programs, which public disclosure may be limited, to the extent necessary to encourage covered persons to conduct effective trials.

(f) COMBINED MORTGAGE LOAN DISCLOSURE.—Not later than 1 year after the designated transfer date, the Bureau shall propose for public comment rules and model disclosures that combine the disclosures required under the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974, into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determines that any proposal issued by the Board of Governors and the Secretary of Housing and Urban Development carries out the same purpose.

SEC. 1033. CONSUMER RIGHTS TO ACCESS INFORMATION.

(a) IN GENERAL.—Subject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, 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 costs, charges and usage data. The information shall be made available in an electronic form usable by consumers.

(b) EXCEPTIONS.—A covered person may 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 provision of 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.—Nothing in this section shall be construed to impose any duty on a covered person to maintain or keep any information about a consumer.

(d) STANDARDIZED FORMATS FOR DATA.—The Bureau, by rule, 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.

(e) CONSULTATION.—The Bureau shall, when prescribing any rule under this section, consult with the Federal banking agencies and the Federal Trade Commission to ensure that the rules—

(1) impose substantively similar requirements on covered persons;

(2) take into account conditions under which covered persons do business both in the United States and in other countries; and

(3) do not require or promote the use of any particular technology in order to develop systems for compliance.

SEC. 1034. RESPONSE TO CONSUMER COMPLAINTS AND INQUIRIES.

(a) TIMELY REGULATOR RESPONSE TO CONSUMERS.—The Bureau shall establish, in consultation with the appropriate Federal regulatory agencies, reasonable procedures to provide a timely response to consumers, in writing where appropriate, to complaints against, or inquiries concerning, a covered person, including—

(1) all steps that have been taken by the regulator in response to the complaint or inquiry of the consumer;

(2) any responses received by the regulator from the covered person; and

(3) any follow-up actions or planned follow-up actions by the regulator in response to the complaint or inquiry of the consumer.

(b) TIMELY RESPONSE TO REGULATOR BY COVERED PERSON.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including—

(1) steps that have been taken by the covered person to respond to the complaint or inquiry of the consumer;

(2) responses received by the covered person from the consumer; and

(3) follow-up actions or planned follow-up actions by the covered person to respond to the complaint or inquiry of the consumer.

(c) PROVISION OF INFORMATION TO CONSUMERS.—

(1) IN GENERAL.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 shall, in a timely manner, comply with a consumer request for information in the control or possession of such covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including supporting written documentation, concerning the account of the consumer.

(2) EXCEPTIONS.—A covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025, a prudential regulator, and any other agency having jurisdiction over a covered person subject to supervision and primary enforcement by the Bureau pursuant to section 1025 may not be required by this section to make available to the consumer—

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

(B) 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;

(C) any information required to be kept confidential by any other provision of law; or

(D) any nonpublic or confidential information, including confidential supervisory information.

(d) AGREEMENTS WITH OTHER AGENCIES.—The Bureau shall enter into a memorandum of understanding with any affected Federal regulatory agency to establish procedures by which any covered person, and the prudential regulators, and any other agency having jurisdiction over a covered person, including the Secretary of the Department of Housing and Urban Development and the Secretary of Education, shall comply with this section.

SEC. 1035. PRIVATE EDUCATION LOAN OMBUDSMAN.

(a) ESTABLISHMENT.—The Secretary, in consultation with the Director, shall designate a Private Education Loan Ombudsman (in this section referred to as the ''Ombudsman'') within the Bureau, to provide timely assistance to borrowers of private education loans.

(b) PUBLIC INFORMATION.—The Secretary and the Director shall disseminate information about the availability and functions of the Ombudsman to borrowers and potential borrowers, as well as institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education student loan programs.

(c) FUNCTIONS OF OMBUDSMAN.—The Ombudsman designated under this subsection shall—

(1) in accordance with regulations of the Director, receive, review, and attempt to resolve informally complaints from borrowers of loans described in subsection (a), including, as appropriate, attempts to resolve such complaints in collaboration with the Department of Education and with institutions of higher education, lenders, guaranty agencies, loan servicers, and other participants in private education loan programs;

(2) not later than 90 days after the designated transfer date, establish a memorandum of understanding with the student loan ombudsman established under section 141(f) of the Higher Education Act of 1965 (20 U.S.C. 1018(f)), to ensure coordination in providing assistance to and serving borrowers seeking to resolve complaints related to their private education or Federal student loans;

(3) compile and analyze data on borrower complaints regarding private education loans; and

(4) make appropriate recommendations to the Director, the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(d) ANNUAL REPORTS.—

(1) IN GENERAL.—The Ombudsman shall prepare an annual report that describes the activities, and evaluates the effectiveness of the Ombudsman during the preceding year.

(2) SUBMISSION.—The report required by paragraph (1) shall be submitted on the same date annually to the Secretary, the Secretary of Education, the Committee on Banking, Housing, and Urban Affairs and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Financial Services and the Committee on Education and Labor of the House of Representatives.

(e) DEFINITIONS.—For purposes of this section, the terms ''private education loan'' and ''institution of higher education'' have the same meanings as in section 140 of the Truth in Lending Act (15 U.S.C. 1650).

SEC. 1036. EFFECTIVE DATE.

This subtitle shall take effect on the designated transfer date.

Subtitle D—Preservation of State Law

SEC. 1041. RELATION TO STATE LAW.

(a) IN GENERAL.—

(1) RULE OF CONSTRUCTION.—This title, other than sections 1044 through 1048, may not be construed as annulling, altering, or affecting, or exempting any person subject to the provisions of this title from complying with, the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that any such provision of law is inconsistent with the provisions of this title, and then only to the extent of the inconsistency.

(2) GREATER PROTECTION UNDER STATE LAW.—For purposes of this subsection, a statute, regulation, order, or interpretation in effect in any State is not inconsistent with the provisions of this title if the protection that such statute, regulation, order, or interpretation affords to consumers is greater than the protection provided under this title. A determination regarding whether a statute, regulation, order, or interpretation in effect in any State is inconsistent with the provisions of this title may be made by the Bureau on its own motion or in response to a nonfrivolous petition initiated by any interested person.

(b) RELATION TO OTHER PROVISIONS OF ENUMERATED CONSUMER LAWS THAT RELATE TO STATE LAW.—No provision of this title, except as provided in section 1083, shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the application of a law in effect in any State with respect to such Federal law.

(c) ADDITIONAL CONSUMER PROTECTION REGULATIONS IN RESPONSE TO STATE ACTION.—

(1) NOTICE OF PROPOSED RULE REQUIRED.—The Bureau shall issue a notice of proposed rulemaking whenever a majority of the States has enacted a resolution in support of the establishment or modification of a consumer protection regulation by the Bureau.

(2) BUREAU CONSIDERATIONS REQUIRED FOR ISSUANCE OF FINAL REGULATION.—Before prescribing a final regulation based upon a notice issued pursuant to paragraph (1), the Bureau shall take into account whether—

(A) the proposed regulation would afford greater protection to consumers than any existing regulation;

(B) the intended benefits of the proposed regulation for consumers would outweigh any increased costs or inconveniences for consumers, and would not discriminate unfairly against any category or class of consumers; and

(C) a Federal banking agency has advised that the proposed regulation is likely to present an unacceptable safety and soundness risk to insured depository institutions.

(3) EXPLANATION OF CONSIDERATIONS.—The Bureau—

(A) shall include a discussion of the considerations required in paragraph (2) in the Federal Register notice of a final regulation prescribed pursuant to this subsection; and

(B) whenever the Bureau determines not to prescribe a final regulation, shall publish an explanation of such determination in the Federal Register, and provide a copy of such explanation to each State that enacted a resolution in support of the proposed regulation, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(4) RESERVATION OF AUTHORITY.—No provision of this subsection shall be construed as limiting or restricting the authority of the Bureau to enhance consumer protection standards established pursuant to this title in response to its own motion or in response to a request by any other interested person.

(5) RULE OF CONSTRUCTION.—No provision of this subsection shall be construed as exempting the Bureau from complying with subchapter II of chapter 5 of title 5, United States Code.

(6) DEFINITION.—For purposes of this subsection, the term ''consumer protection regulation'' means a regulation that the Bureau is authorized to prescribe under the Federal consumer financial laws.

SEC. 1042. PRESERVATION OF ENFORCEMENT POWERS OF STATES.

(a) IN GENERAL.—

(1) ACTION BY STATE.—The attorney general (or the equivalent thereof) of any State may bring a civil action in the name of such State, as parens patriae on behalf of natural persons residing in such State, in any district court of the United States in that State or in State court having jurisdiction over the defendant, to enforce provisions of this title or regulations issued thereunder and to secure remedies under provisions of this title or remedies otherwise provided under other law. A State regulator may bring a civil action or other appropriate proceeding to enforce the provisions of this title or regulations issued thereunder with respect to any entity that is State-chartered, incorporated, licensed, or otherwise authorized to do business under State law, and to secure remedies under provisions of this title or remedies otherwise provided under other provisions of law with respect to a State-chartered entity.

(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as modifying, limiting, or superseding the operation of any provision of an enumerated consumer law that relates to the authority of a State attorney general or State regulator to enforce such Federal law.

(b) CONSULTATION REQUIRED.—

(1) NOTICE.—

(A) IN GENERAL.—Before initiating any action in a court or other administrative or regulatory proceeding against any covered person to enforce any provision of this title, including any regulation prescribed by the Director under this title, a State attorney general or State regulator shall timely provide a copy of the complete complaint to be filed and written notice describing such action or proceeding to the Bureau and the prudential regulator, if any, or the designee thereof.

(B) EMERGENCY ACTION.—If prior notice is not practicable, the State attorney general or State regulator shall provide a copy of the complete complaint and the notice to the Bureau and the prudential regulator, if any, immediately upon instituting the action or proceeding.

(C) CONTENTS OF NOTICE.—The notification required under this paragraph shall, at a minimum, describe—

(i) the identity of the parties;

(ii) the alleged facts underlying the proceeding; and

(iii) whether there may be a need to coordinate the prosecution of the proceeding so as not to interfere with any action, including any rulemaking, undertaken by the Director, a prudential regulator, or another Federal agency.

(2) BUREAU RESPONSE.—In any action described in paragraph (1), the Bureau may—

(A) intervene in the action as a party;

(B) upon intervening—

(i) remove the action to the appropriate United States district court, if the action was not originally brought there; and

(ii) be heard on all matters arising in the action; and

(C) appeal any order or judgment, to the same extent as any other party in the proceeding may.

(c) REGULATIONS.—The Director shall prescribe regulations to implement the requirements of this section and, from time to time, provide guidance in order to further coordinate actions with the State attorneys general and other regulators.

(d) PRESERVATION OF STATE AUTHORITY.—

(1) STATE CLAIMS.—No provision of this section shall be construed as altering, limiting, or affecting the authority of a State attorney general or any other regulatory or enforcement agency or authority to bring an action or other regulatory proceeding arising solely under the law in effect in that State.

(2) STATE SECURITIES REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State securities commission (or any agency or office performing like functions) under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or authority.

(3) STATE INSURANCE REGULATORS.—No provision of this title shall be construed as altering, limiting, or affecting the authority of a State insurance commission or State insurance regulator under State law to adopt rules, initiate enforcement proceedings, or take any other action with respect to a person regulated by such commission or regulator.

SEC. 1043. PRESERVATION OF EXISTING CONTRACTS.

This title, and regulations, orders, guidance, and interpretations prescribed, issued, or established by the Bureau, shall not be construed to alter or affect the applicability of any regulation, order, guidance, or interpretation prescribed, issued, and established by the Comptroller of the Currency or the Director of the Office of Thrift Supervision regarding the applicability of State law under Federal banking law to any contract entered into on or before the date of the enactment of this title, by national banks, Federal savings associations, or subsidiaries thereof that are regulated and supervised by the Comptroller of the Currency or the Director of the Office of Thrift Supervision, respectively.

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter one of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

"SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

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

''(1) NATIONAL BANK.—The term 'national bank' includes—

''(A) any bank organized under the laws of the United States; and

''(B) any Federal branch established in accordance with the International Banking Act of 1978.

''(2) STATE CONSUMER FINANCIAL LAWS.—The term 'State consumer financial law' means a State law that does not directly or indirectly discriminate against national banks and that directly and specifically regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(3) OTHER DEFINITIONS.—The terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(b) PREEMPTION STANDARD.—

''(1) IN GENERAL.—State consumer financial laws are preempted, only if—

''(A) application of a State consumer financial law would have a discriminatory effect on national banks, in comparison with the effect of the law on a bank chartered by that State;

''(B) the preemption of the State consumer financial law is in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al, 517 U.S. 25 (1996), and a preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, in accordance with applicable law, on a case-by-case basis, and any such determination by a court shall comply with the standards set forth in subsection (d), with the court making the finding under subsection (d), de novo; or

''(C) the State consumer financial law is preempted by a provision of Federal law other than this title.

''(2) SAVINGS CLAUSE.—This title does not preempt, annul, or affect the applicability of any State law to any subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank).

''(3) CASE-BY-CASE BASIS.—

''(A) DEFINITION.—As used in this section the term 'case-by-case basis' refers to a determination pursuant to this section made by the Comptroller concerning the impact of a particular State consumer financial law on any national bank that is subject to that law, or the law of any other State with substantively equivalent terms.

''(B) CONSULTATION.—When making a determination on a case-by-case basis that a State consumer financial law of another State has substantively equivalent terms as one that the Comptroller is preempting, the Comptroller shall first consult with the Bureau of Consumer Financial Protection and shall take the views of the Bureau into account when making the determination.

''(4) RULE OF CONSTRUCTION.—This title does not occupy the field in any area of State law.

''(5) STANDARDS OF REVIEW.—

''(A) PREEMPTION.—A court reviewing any determinations made by the Comptroller regarding preemption of a State law by this title shall assess the validity of such determinations, depending upon the thoroughness evident in the consideration of the agency, the validity of the reasoning of the agency, the consistency with other valid determinations made by the agency, and other factors which the court finds persuasive and relevant to its decision.

''(B) SAVINGS CLAUSE.—Except as provided in subparagraph (A), nothing in this section shall affect the deference that a court may afford to the Comptroller in making determinations regarding the meaning or interpretation of title LXII of the Revised Statutes of the United States or other Federal laws.

''(6) COMPTROLLER DETERMINATION NOT DELEGABLE.—Any regulation, order, or determination made by the Comptroller of the Currency under paragraph (1)(B) shall be made by the Comptroller, and shall not be delegable to another officer or employee of the Comptroller of the Currency.

''(c) SUBSTANTIAL EVIDENCE.—No regulation or order of the Comptroller of the Currency prescribed under subsection (b)(1)(B), shall be interpreted or applied so as to invalidate, or otherwise declare inapplicable to a national bank, the provision of the State consumer financial law, unless substantial evidence, made on the record of the proceeding, supports the specific finding regarding the preemption of such provision in accordance with the legal standard of the decision of the Supreme Court of the United States in Barnett Bank of Marion County, N.A. v. Nelson, Florida Insurance Commissioner, et al., 517 U.S. 25 (1996).

''(d) OTHER FEDERAL LAWS.—Notwithstanding any other provision of law, the Comptroller of the Currency may not prescribe a regulation or order pursuant to subsection (b)(1)(B) until the Comptroller of the Currency, after consultation with the Director of the Bureau of Consumer Financial Protection, makes a finding, in writing, that a Federal law provides a substantive standard, applicable to a national bank, which regulates the particular conduct, activity, or authority that is subject to such provision of the State consumer financial law.

''(e) PERIODIC REVIEW OF PREEMPTION DETERMINATIONS.—

''(1) IN GENERAL.—The Comptroller of the Currency shall periodically conduct a review, through notice and public comment, of each determination that a provision of Federal law preempts a State consumer financial law. The agency shall conduct such review within the 5-year period after prescribing or otherwise issuing such determination, and at least once during each 5-year period thereafter. After conducting the review of, and inspecting the comments made on, the determination, the agency shall publish a notice in the Federal Register announcing the decision to continue or rescind the determination or a proposal to amend the determination. Any such notice of a proposal to amend a determination and the subsequent resolution of such proposal shall comply with the procedures set forth in subsections (a) and (b) of section 5244 of the Revised Statutes of the United States (12 U.S.C. 43 (a), (b)).

''(2) REPORTS TO CONGRESS.—At the time of issuing a review conducted under paragraph (1), the Comptroller of the Currency shall submit a report regarding such review to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report submitted to the respective committees shall address whether the agency intends to continue, rescind, or propose to amend any determination that a provision of Federal law preempts a State consumer financial law, and the reasons therefor.

''(f) APPLICATION OF STATE CONSUMER FINANCIAL LAW TO SUBSIDIARIES AND AFFILIATES.—Notwithstanding any provision of this title, a State consumer financial law shall apply to a subsidiary or affiliate of a national bank (other than a subsidiary or affiliate that is chartered as a national bank) to the same extent that the State consumer financial law applies to any person, corporation, or other entity subject to such State law.

''(g) PRESERVATION OF POWERS RELATED TO CHARGING INTEREST.—No provision of this title shall be construed as altering or otherwise affecting the authority conferred by section 5197 of the Revised Statutes of the United States (12 U.S.C. 85) for the charging of interest by a national bank at the rate allowed by the laws of the State, territory, or district where the bank is located, including with respect to the meaning of 'interest' under such provision.

''(h) TRANSPARENCY OF OCC PREEMPTION DETERMINATIONS.—The Comptroller of the Currency shall publish and update no less frequently than quarterly, a list of preemption determinations by the Comptroller of the Currency then in effect that identifies the activities and practices covered by each determination and the requirements and constraints determined to be preempted.''.

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

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

SEC. 1045. CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(i) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES AND AFFILIATES OF NATIONAL BANKS.—

''(1) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution', 'subsidiary', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''(2) RULE OF CONSTRUCTION.—No provision of this title shall be construed as preempting, annulling, or affecting the applicability of State law to any subsidiary, affiliate, or agent of a national bank (other than

a subsidiary, affiliate, or agent that is chartered as a national bank).''.

SEC. 1046. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—The Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by inserting after section 5 the following new section:

''SEC. 6. STATE LAW PREEMPTION STANDARDS FOR FEDERAL SAVINGS ASSOCIATIONS CLARIFIED.

''(a) IN GENERAL.—Any determination by a court or by the Director or any successor officer or agency regarding the relation of State law to a provision of this Act or any regulation or order prescribed under this Act shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of State law.

''(b) PRINCIPLES OF CONFLICT PREEMPTION APPLICABLE.—Notwithstanding the authorities granted under sections 4 and 5, this Act does not occupy the field in any area of State law.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Home Owners' Loan Act (12 U.S.C. 1461 et seq.) is amended by striking the item relating to section 6 and inserting the following new item:

''Sec. 6.. State law preemption standards for Federal savings associations and subsidiaries clarified.''.

SEC. 1047. VISITORIAL STANDARDS FOR NATIONAL BANKS AND SAVINGS ASSOCIATIONS.

(a) NATIONAL BANKS.—Section 5136C of the Revised Statutes of the United States (as added by this subtitle) is amended by adding at the end the following:

''(j) VISITORIAL POWERS.—

''(1) IN GENERAL.—No provision of this title which relates to visitorial powers to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction, as authorized under section 5240(a)—

''(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or nonpreempted State law against a national bank, as authorized by such law, or to seek relief for such residents from any violation of any such law by any national bank.

''(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Comptroller of the Currency before acting under paragraph (1).

''(k) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this title or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

(b) SAVINGS ASSOCIATIONS.—Section 6 of the Home Owners' Loan Act (as added by this title) is amended by adding at the end the following:

''(c) VISITORIAL POWERS.—

''(1) IN GENERAL.—No provision of this Act shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

''(A) to enforce any applicable provision of Federal or State law, as authorized by such law; or

''(B) on behalf of residents of such State, to enforce any applicable provision of any Federal or nonpreempted State law against a Federal savings association, as authorized by such law, or to seek relief for such residents from any violation of any such law by any Federal savings association.

''(2) PRIOR CONSULTATION WITH OCC REQUIRED.—The attorney general (or other chief law enforcement officer) of any State shall consult with the Comptroller of the Currency before acting under paragraph (1).

''(d) ENFORCEMENT ACTIONS.—The ability of the Comptroller of the Currency to bring an enforcement action under this Act or section 5 of the Federal Trade Commission Act does not preclude any private party from enforcing rights granted under Federal or State law in the courts.''.

SEC. 1048. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle E—Enforcement Powers

SEC. 1051. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) BUREAU INVESTIGATION.—The term ''Bureau investigation'' means any inquiry conducted by a Bureau investigator for the purpose of ascertaining whether any person is or has been engaged in any conduct that is a violation, as defined in this section.

(2) BUREAU INVESTIGATOR.—The term ''Bureau investigator'' means any attorney or investigator employed by the Bureau who is charged with the duty of enforcing or carrying into effect any Federal consumer financial law.

(3) CIVIL INVESTIGATIVE DEMAND AND DEMAND.—The terms ''civil investigative demand'' and ''demand'' mean any demand issued by the Bureau.

(4) CUSTODIAN.—The term ''custodian'' means the custodian or any deputy custodian designated by the Bureau.

(5) DOCUMENTARY MATERIAL.—The term ''documentary material'' includes the original or any copy of any book, document, record, report, memorandum, paper, communication, tabulation, chart, logs, electronic files, or other data or data compilations stored in any medium.

(6) VIOLATION.—The term ''violation'' means any act or omission that, if proved, would constitute a violation of any provision of Federal consumer financial law.

SEC. 1052. INVESTIGATIONS AND ADMINISTRATIVE DISCOVERY.

(a) JOINT INVESTIGATIONS.—

(1) IN GENERAL.—The Bureau or, where appropriate, a Bureau investigator, may engage in joint investigations and requests for information, as authorized under this title.

(2) FAIR LENDING.—The authority under paragraph (1) includes matters relating to fair lending, and where appropriate, joint investigations with, and requests for information from, the Secretary of Housing and Urban Development, the Attorney General of the United States, or both.

(b) SUBPOENAS.—

(1) IN GENERAL.—The Bureau or a Bureau 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.

(2) FAILURE TO OBEY.—In the 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 the Bureau or a Bureau investigator and after notice to such person, may issue an order requiring such person to appear and give testimony or to appear and produce documents or other material.

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

(c) DEMANDS.—

(1) IN GENERAL.—Whenever the Bureau 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, the Bureau may, before the institution of any proceedings under the Federal consumer financial law, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to—

(A) produce such documentary material for inspection and copying or reproduction in the form or medium requested by the Bureau;

(B) submit such tangible things;

(C) file written reports or answers to questions;

(D) give oral testimony concerning documentary material, tangible things, or other information; or

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

(2) 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.

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

(A) 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;

(B) 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

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

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

(A) 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;

(B) 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

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

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

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

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

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

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

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

(B) identify a Bureau investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7) SERVICE.—Any civil investigative demand and any enforcement petition filed under this section may be served—

(A) by any Bureau investigator at any place within the territorial jurisdiction of any court of the United States; and

(B) upon any person who is not found within the territorial jurisdiction of any court of the United States—

(i) in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign nation; and

(ii) 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.

(8) 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—

(A) 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;

(B) 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

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

(9) PROOF OF SERVICE.—

(A) IN GENERAL.—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.

(B) RETURN RECEIPTS.—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.

(10) 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.

(11) 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.

(12) 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.

(13) TESTIMONY.—

(A) IN GENERAL.—

(i) OATH OR AFFIRMATION.—Any Bureau investigator before whom oral testimony is to be taken shall put the witness under oath or affirmation, and shall personally, or by any individual acting under the direction of and in the presence of the Bureau investigator, record the testimony of the witness.

(ii) TRANSCRIPTION.—The testimony shall be taken stenographically and transcribed.

(iii) TRANSMISSION TO CUSTODIAN.—After the testimony is fully transcribed, the Bureau investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) PARTIES PRESENT.—Any Bureau 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, the attorney of that person, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) 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 Bureau investigator before whom the oral testimony of such person is to be taken and such person.

(D) 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) AUTHORITY.—The attorney may advise a person described in clause (i), 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.—A person described in clause (i), or the attorney for that person, may object on the record to any question, in whole or in part, and such person shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person 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 such person or attorney shall not otherwise interrupt the oral examination.

(iv) REFUSAL TO ANSWER.—If a person described in clause (i) refuses to answer any question—

(I) the Bureau may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question; and

(II) 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.

(E) TRANSCRIPTS.—For purposes of this subsection—

(i) after the testimony of any witness is fully transcribed, the Bureau investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript;

(ii) the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness;

(iii) any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Bureau investigator, with a statement of the reasons given by the witness for making such changes;

(iv) 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; and

(v) if the transcript is not signed by the witness during the 30-day period following the date on which the witness is first afforded a reasonable opportunity to examine the transcript, the Bureau 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.

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

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

(H) 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.

(d) CONFIDENTIAL TREATMENT OF DEMAND MATERIAL.—

(1) IN GENERAL.—Documentary materials and tangible things received as a result of a civil investigative demand shall be subject to requirements and procedures regarding confidentiality, in accordance with rules established by the Bureau.

(2) DISCLOSURE TO CONGRESS.—No rule established by the Bureau regarding the confidentiality of materials submitted to, or otherwise obtained by, the Bureau shall be intended to prevent disclosure to either House of Congress or to an appropriate committee of the Congress, except that the Bureau is permitted to adopt rules allowing prior notice to any party that owns or otherwise provided the material to the Bureau and had designated such material as confidential.

(e) PETITION FOR ENFORCEMENT.—

(1) IN GENERAL.—Whenever any person fails to comply with any civil investigative demand duly served upon him 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 Bureau, 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.

(2) 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.

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

(1) 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 Bureau investigator named in the demand, such person may file with the Bureau a petition for an order by the Bureau modifying or setting aside the demand.

(2) COMPLIANCE DURING PENDENCY.—The time permitted for compliance with the demand in whole or in part, as determined proper and ordered by the Bureau, shall not run during the pendency of a petition under paragraph (1) at the Bureau, except that such person shall comply with any portions of the demand not sought to be modified or set aside.

(3) SPECIFIC GROUNDS.—A petition under paragraph (1) shall specify each ground upon which the petitioner relies in seeking 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.

(g) 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 him by this section or rule promulgated by the Bureau.

(h) JURISDICTION OF COURT.—

(1) 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 out the provisions of this section.

(2) APPEAL.—Any final order entered as described in paragraph (1) shall be subject to appeal pursuant to section 1291 of title 28, United States Code.

SEC. 1053. HEARINGS AND ADJUDICATION PROCEEDINGS.

(a) IN GENERAL.—The Bureau is authorized to 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—

(1) the provisions of this title, including any rules prescribed by the Bureau under this title; and

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

(b) SPECIAL RULES FOR CEASE-AND-DESIST PROCEEDINGS.—

(1) ORDERS AUTHORIZED.—

(A) IN GENERAL.—If, in the opinion of the Bureau, any covered person or service provider is engaging or has engaged in an activity that violates a law, rule, or any condition imposed in writing on the person by the Bureau, the Bureau may, subject to sections 1024, 1025, and 1026, issue and serve upon the covered person or service provider a notice of charges in respect thereof.

(B) CONTENT OF NOTICE.—The notice under subparagraph (A) shall contain a statement of the facts constituting the alleged violation or violations, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the covered person or service provider, such hearing to be held not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Bureau, at the request of any party so served.

(C) CONSENT.—Unless the party or parties served under subparagraph (B) appear at the hearing personally or by a duly authorized representative, such person shall be deemed to have consented to the issuance of the cease-and-desist order.

(D) PROCEDURE.—In the event of consent under subparagraph (C), or if, upon the record, made at any such hearing, the Bureau finds that any violation specified in the notice of charges has been established, the Bureau may issue and serve upon the covered person or service provider an order to cease and desist from the violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the covered person or service provider to cease and desist from the subject activity, and to take affirmative action to correct the conditions resulting from any such violation.

(2) EFFECTIVENESS OF ORDER.—A cease-and-desist order shall become effective at the expiration of 30 days after the date of service of an order under paragraph (1) upon the covered person or service provider concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Bureau or a reviewing court.

(3) DECISION AND APPEAL.—Any hearing provided for in this subsection shall be held in the Federal judicial district or in the territory in which the residence or principal office or place of business 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. After such hearing, and within 90 days after the Bureau has notified the parties that the case has been submitted to the Bureau for final decision, the Bureau shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and 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. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4), and thereafter until the record in the proceeding has been filed as provided in paragraph (4), the Bureau may at any time, upon such notice and in such manner as the Bureau shall determine proper, modify, terminate, or set aside any such order. Upon filing of the record as provided, the Bureau may modify, terminate, or set aside any such order with permission of the court.

(4) APPEAL TO COURT OF APPEALS.—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 Bureau be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Bureau, and thereupon the Bureau shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of paragraph (3) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Bureau. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court of the United States, upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(5) NO STAY.—The commencement of proceedings for judicial review under paragraph (4) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Bureau.

(c) SPECIAL RULES FOR TEMPORARY CEASE-AND-DESIST PROCEEDINGS.—

(1) IN GENERAL.—Whenever the Bureau determines that the violation specified in the notice of charges served upon a person, including a service provider, pursuant to subsection (b), 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 subsection (b), the Bureau may issue a temporary order requiring the 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. Such order may include any requirement authorized under this subtitle. Such order shall become effective upon service upon the person and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Bureau 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.

(2) APPEAL.—Not later than 10 days after the covered person or service provider 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 residence or principal office or place of business of the 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 subsection (b), and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b) specifies, on the basis of particular facts and circumstances, that the books and records of a covered person or service provider are so incomplete or inaccurate that the Bureau 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 Bureau 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 subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b) in connection with the notice of charges; or

(II) the date the Bureau determines, by examination or otherwise, that the books and records of the covered person or service provider are accurate and reflect the financial condition thereof.

(d) SPECIAL RULES FOR ENFORCEMENT OF ORDERS.—

(1) IN GENERAL.—The Bureau may in its discretion apply to the United States district court within the jurisdiction of which the principal office or place of business of the 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.

(2) 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.

(e) RULES.—The Bureau shall prescribe rules establishing such procedures as may be necessary to carry out this section.

SEC. 1054. LITIGATION AUTHORITY.

(a) IN GENERAL.—If any person violates a Federal consumer financial law, the Bureau may, subject to sections 1024, 1025, and 1026, commence a civil action against such person to impose a civil penalty or to seek all appropriate legal and equitable relief including a permanent or temporary injunction as permitted by law.

(b) REPRESENTATION.—The Bureau may act in its own name and through its own attorneys in enforcing any provision of this title, rules thereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Bureau is a party.

(c) COMPROMISE OF ACTIONS.—The Bureau may compromise or settle any action if such compromise is approved by the court.

(d) NOTICE TO THE ATTORNEY GENERAL.—When commencing a civil action under Federal consumer financial law, or any rule thereunder, the Bureau shall notify the Attorney General and, with respect to a civil action against an insured depository institution or insured credit union, the appropriate prudential regulator.

(e) APPEARANCE BEFORE THE SUPREME COURT.—The Bureau may represent itself in its own name before the Supreme Court of the United States, provided that the Bureau makes a written request to the Attorney General within the 10-day period which begins on the date of entry of the judgment which would permit any party to file a petition for writ of certiorari, and the Attorney General concurs with such request or fails to take action within 60 days of the request of the Bureau.

(f) 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 any Federal consumer financial law.

(g) TIME FOR BRINGING ACTION.—

(1) IN GENERAL.—Except as otherwise permitted by law or equity, no action may be brought under this title more than 3 years after the date of discovery of the violation to which an action relates.

(2) LIMITATIONS UNDER OTHER FEDERAL LAWS.—

(A) IN GENERAL.—For purposes of this subsection, an action arising under this title does not include claims arising solely under enumerated consumer laws.

(B) BUREAU AUTHORITY.—In any action arising solely under an enumerated consumer law, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

(C) TRANSFERRED AUTHORITY.—In any action arising solely under laws for which authorities were transferred under subtitles F and H, the Bureau may commence, defend, or intervene in the action in accordance with the requirements of that provision of law, as applicable.

SEC. 1055. RELIEF AVAILABLE.

(a) ADMINISTRATIVE PROCEEDINGS OR COURT ACTIONS.—

(1) JURISDICTION.—The court (or the Bureau, as the case may be) in an action or adjudication proceeding brought under Federal consumer financial law, shall have jurisdiction to grant any appropriate legal or equitable relief with respect to a violation of Federal consumer financial law, including a violation of a rule or order prescribed under a Federal consumer financial law.

(2) RELIEF.—Relief under this section may include, without limitation—

(A) rescission or reformation of contracts;

(B) refund of moneys or return of real property;

(C) restitution;

(D) disgorgement or compensation for unjust enrichment;

(E) payment of damages or other monetary relief;

(F) public notification regarding the violation, including the costs of notification;

(G) limits on the activities or functions of the person; and

(H) civil money penalties, as set forth more fully in subsection (c).

(3) NO EXEMPLARY OR PUNITIVE DAMAGES.—Nothing in this subsection shall be construed as authorizing the imposition of exemplary or punitive damages.

(b) RECOVERY OF COSTS.—In any action brought by the Bureau, a State attorney general, or any State regulator to enforce any Federal consumer financial law, the Bureau, the State attorney general, or the State regulator may recover its costs in connection with prosecuting such action if the Bureau, the State attorney general, or the State regulator is the prevailing party in the action.

(c) CIVIL MONEY PENALTY IN COURT AND ADMINISTRATIVE ACTIONS.—

(1) IN GENERAL.—Any person that violates, through any act or omission, any provision of Federal consumer financial law shall forfeit and pay a civil penalty pursuant to this subsection.

(2) PENALTY AMOUNTS.—

(A) FIRST TIER.—For any violation of a law, rule, or final order or condition imposed in writing by the Bureau, a civil penalty may not exceed $5,000 for each day during which such violation or failure to pay continues.

(B) SECOND TIER.—Notwithstanding paragraph (A), for any person that recklessly engages in a violation of a Federal consumer financial law, a civil penalty may not exceed $25,000 for each day during which such violation continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), for any person that knowingly violates a Federal consumer financial law, a civil penalty may not exceed $1,000,000 for each day during which such violation continues.

(3) MITIGATING FACTORS.—In determining the amount of any penalty assessed under paragraph (2), the Bureau or the court shall take into account the appropriateness of the penalty with respect to—

(A) the size of financial resources and good faith of the person charged;

(B) the gravity of the violation or failure to pay;

(C) 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;

(D) the history of previous violations; and

(E) such other matters as justice may require.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Bureau may compromise, modify, or remit any penalty which may be assessed or had already been assessed under paragraph (2). 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.

(5) NOTICE AND HEARING.—No civil penalty may be assessed under this subsection with respect to a violation of any Federal consumer financial law, unless—

(A) the Bureau gives notice and an opportunity for a hearing to the person accused of the violation; or

(B) the appropriate court has ordered such assessment and entered judgment in favor of the Bureau.

SEC. 1056. REFERRALS FOR CRIMINAL PROCEEDINGS.

If the Bureau obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Bureau shall have the power to transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law. Nothing in this section affects any other authority of the Bureau to disclose information.

SEC. 1057. EMPLOYEE PROTECTION.

(a) IN GENERAL.—No covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the employer, the Bureau, or any other State, local, or Federal, government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this title or any other provision of law that is subject to the jurisdiction of the Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau;

(3) filed, instituted, or caused to be filed or instituted any proceeding under any Federal consumer financial law; or

(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of

any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Bureau.

(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ''covered employee'' means any individual performing tasks related to the offering or provision of a consumer financial product or service.

(c) PROCEDURES AND TIMETABLES.—

(1) COMPLAINT.—

(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such alleged violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act.

(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of —

(i) the filing of the complaint;

(ii) the allegations contained in the complaint;

(iii) the substance of evidence supporting the complaint; and

(iv) opportunities that will be afforded to such person under paragraph (2).

(2) INVESTIGATION BY SECRETARY OF LABOR.—

(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

(ii) notify the complainant and the person alleged to have committed the violation of subsection (a), in writing, of such determination.

(B) NOTICE OF RELIEF AVAILABLE.—If the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary of Labor shall, together with the notice under subparagraph (A)(ii), issue a preliminary order providing the relief prescribed by paragraph (4)(B).

(C) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of notification of a determination of the Secretary of Labor under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously, and if a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

(3) GROUNDS FOR DETERMINATION OF COMPLAINTS.—

(A) IN GENERAL.—The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(B) REBUTTAL EVIDENCE.—Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(C) EVIDENTIARY STANDARDS.—The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

(B) PENALTIES.—

(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

(I) to take affirmative action to abate the violation;

(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

(III) to provide compensatory damages to the complainant.

(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(C) PENALTY FOR FRIVOLOUS CLAIMS.—If the Secretary of Labor finds that a complaint under paragraph (1) is frivolous or has been brought in bad faith, the Secretary of Labor may award to the prevailing employer a reasonable attorney fee, not exceeding $1,000, to be paid by the complainant.

(D) DE NOVO REVIEW.—

(i) FAILURE OF THE SECRETARY TO ACT.—If the Secretary of Labor has not issued a final order within 210 days after the date of filing of a complaint under this subsection, or within 90 days after the date of receipt of a written determination, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States having jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.

(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

(II) the amount of back pay, with interest; and

(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

(5) FAILURE TO COMPLY WITH ORDER.—

(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

(d) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) NO WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), and notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph (3), and notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent

that it requires arbitration of a dispute arising under this section.

(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under subsection (a)(4), unless the Bureau determines, by rule, that such provision is inconsistent with the purposes of this title.

SEC. 1058. EFFECTIVE DATE.

This subtitle shall become effective on the designated transfer date.

Subtitle F—Transfer of Functions and Personnel; Transitional Provisions

SEC. 1061. TRANSFER OF CONSUMER FINANCIAL PROTECTION FUNCTIONS.

(a) DEFINED TERMS.—For purposes of this subtitle—

(1) the term ''consumer financial protection functions'' means research, rulemaking, issuance of orders or guidance, supervision, examination, and enforcement activities, powers, and duties relating to the offering or provision of consumer financial products or services; and

(2) the terms ''transferor agency'' and ''transferor agencies'' mean, respectively—

(A) the Board of Governors (and any Federal reserve bank, as the context requires), the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Department of Housing and Urban Development, and the heads of those agencies; and

(B) the agencies listed in subparagraph (A), collectively.

(b) IN GENERAL.—Except as provided in subsection (c), consumer financial protection functions are transferred as follows:

(1) BOARD OF GOVERNORS.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Board of Governors are transferred to the Bureau.

(B) BOARD OF GOVERNORS AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Board of Governors, relating to consumer financial protection functions, on the day before the designated transfer date.

(2) COMPTROLLER OF THE CURRENCY.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Comptroller of the Currency are transferred to the Bureau.

(B) COMPTROLLER AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Comptroller of the Currency, relating to consumer financial protection functions, on the day before the designated transfer date.

(3) DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Director of the Office of Thrift Supervision are transferred to the Bureau.

(B) DIRECTOR AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Director of the Office of Thrift Supervision, relating to consumer financial protection functions, on the day before the designated transfer date.

(4) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the Federal Deposit Insurance Corporation are transferred to the Bureau.

(B) CORPORATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the Federal Deposit Insurance Corporation, relating to consumer financial protection functions, on the day before the designated transfer date.

(5) FEDERAL TRADE COMMISSION.—

(A) TRANSFER OF FUNCTIONS.—Except as provided in subparagraph (C), all consumer financial protection functions of the Federal Trade Commission are transferred to the Bureau.

(B) COMMISSION AUTHORITY.—Except as provided in subparagraph (C), the Bureau shall have all powers and duties that were vested in the Federal Trade Commission relating to consumer financial protection functions on the day before the designated transfer date.

(C) CONTINUATION OF CERTAIN COMMISSION AUTHORITIES.—Notwithstanding subparagraphs (A) and (B), the Federal Trade Commission shall continue to have authority to enforce, and issue rules with respect to—

(i) the Credit Repair Organizations Act (15 U.S.C. 1679 et seq.);

(ii) section 5 of the Federal Trade Commission Act (15 U.S.C. 45); and

(iii) the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.).

(6) NATIONAL CREDIT UNION ADMINISTRATION.—

(A) TRANSFER OF FUNCTIONS.—All consumer financial protection functions of the National Credit Union Administration are transferred to the Bureau.

(B) NATIONAL CREDIT UNION ADMINISTRATION AUTHORITY.—The Bureau shall have all powers and duties that were vested in the National Credit Union Administration, relating to consumer financial protection functions, on the day before the designated transfer date.

(7) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(A) TRANSFER OF FUNCTIONS.—All consumer protection functions of the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) are transferred to the Bureau.

(B) AUTHORITY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The Bureau shall have all powers and duties that were vested in the Secretary of the Department of Housing and Urban Development relating to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.), and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.), on the day before the designated transfer date.

(c) TRANSFERS OF FUNCTIONS SUBJECT TO EXAMINATION AND ENFORCEMENT AUTHORITY REMAINING WITH TRANSFEROR AGENCIES.—The transfers of functions in subsection (b) do not affect the authority of the agencies identified in subsection (b) from conducting examinations or initiating and maintaining enforcement proceedings, including performing appropriate supervisory and support functions relating thereto, in accordance with sections 1024, 1025, and 1026.

(d) EFFECTIVE DATE.—Subsections (b) and (c) shall become effective on the designated transfer date.

SEC. 1062. DESIGNATED TRANSFER DATE.

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall—

(1) in consultation with the Chairman of the Board of Governors, the Chairperson of the Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, designate a single calendar date for the transfer of functions to the Bureau under section 1061; and

(2) publish notice of that designated date in the Federal Register.

(b) CHANGING DESIGNATION.—The Secretary—

(1) may, in consultation with the Chairman of the Board of Governors, the Chairperson of the Federal Deposit Insurance Corporation, the Chairman of the Federal Trade Commission, the Chairman of the National Credit Union Administration Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Secretary of the Department of Housing and Urban Development, and the Director of the Office of Management and Budget, change the date designated under subsection (a); and

(2) shall publish notice of any changed designated date in the Federal Register.

(c) PERMISSIBLE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), any date designated under this section shall be not earlier than 180 days, nor later than 18 months, after the date of enactment of this Act.

(2) EXTENSION OF TIME.—The Secretary may designate a date that is later than 18 months after the date of enactment of this Act if the Secretary transmits to appropriate committees of Congress—

(A) a written determination that orderly implementation of this title is not feasible before the date that is 18 months after the date of enactment of this Act;

(B) an explanation of why an extension is necessary for the orderly implementation of this title; and

(C) a description of the steps that will be taken to effect an orderly and timely implementation of this title within the extended time period.

(3) EXTENSION LIMITED.—In no case may any date designated under this section be later than 24 months after the date of enactment of this Act.

SEC. 1063. SAVINGS PROVISIONS.

(a) BOARD OF GOVERNORS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(1) does not affect the validity of any right, duty, or obligation of the United States, the Board of Governors (or any Federal reserve bank), or any other person that—

(A) arises under any provision of law relating to any consumer financial protection function of the Board of Governors transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Board of Governors (or any Federal reserve bank) before the designated transfer date with respect to any consumer financial protection function of the Board of Governors (or any Federal reserve bank) transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Board of Governors (or Federal reserve bank) as a party to any such proceeding as of the designated transfer date.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(4) does not affect the validity of any right, duty, or obligation of the United States, the Federal Deposit Insurance Corporation, the Board of Directors of that Corporation, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Deposit Insurance Corporation (or the Board of Directors of that Corporation) before the designated transfer date with respect to any consumer financial protection function of the Federal Deposit Insurance Corporation transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Deposit Insurance Corporation (or Board of Directors) as a party to any such proceeding as of the designated transfer date.

(c) FEDERAL TRADE COMMISSION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(5) does not affect the validity of any right, duty, or obligation of the United States, the Federal Trade Commission, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Federal Trade Commission before the designated transfer date with respect to any consumer financial protection function of the Federal Trade Commission transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Federal Trade Commission as a party to any such proceeding as of the designated transfer date.

(d) NATIONAL CREDIT UNION ADMINISTRATION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(6) does not affect the validity of any right, duty, or obligation of the United States, the National Credit Union Administration, the National Credit Union Administration Board, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the National Credit Union Administration (or the National Credit Union Administration Board) before the designated transfer date with respect to any consumer financial protection function of the National Credit Union Administration transferred to the Bureau by this title, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the National Credit Union Administration (or National Credit Union Administration Board) as a party to any such proceeding as of the designated transfer date.

(e) OFFICE OF THE COMPTROLLER OF THE CURRENCY.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(2) does not affect the validity of any right, duty, or obligation of the United States, the Comptroller of the Currency, the Office of the Comptroller of the Currency, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Comptroller of the Currency (or the Office of the Comptroller of the Currency) with respect to any consumer financial protection function of the Comptroller of the Currency transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Comptroller of the Currency (or the Office of the Comptroller of the Currency) as a party to any such proceeding as of the designated transfer date.

(f) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(3) does not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Thrift Supervision, the Office of Thrift Supervision, or any other person, that—

(A) arises under any provision of law relating to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title; and

(B) that existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—No provision of this Act shall abate any proceeding commenced by or against the Director of the Office of Thrift Supervision (or the Office of Thrift Supervision) with respect to any consumer financial protection function of the Director of the Office of Thrift Supervision transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Director (or the Office of Thrift Supervision) as a party to any such proceeding as of the designated transfer date.

(g) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Section 1061(b)(7) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development), or any other person, that—

(A) arises under any provision of law relating to any function of the Secretary of the Department of Housing and Urban Development with respect to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) or the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. 5102 et seq.) transferred to the Bureau by this title; and

(B) existed on the day before the designated transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any proceeding commenced by or against the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) with respect to any consumer financial protection function of the Secretary of the Department of Housing and Urban Development transferred to the Bureau by this title before the designated transfer date, except that the Bureau, subject to sections 1024, 1025, and 1026, shall be substituted for the Secretary of the Department of Housing and Urban Development (or the Department of Housing and Urban Development) as a party to any such proceeding as of the designated transfer date.

(h) CONTINUATION OF EXISTING ORDERS, RULES, DETERMINATIONS, AGREEMENTS, AND RESOLUTIONS.—All orders, resolutions, determinations, agreements, and rules that have been issued, made, prescribed, or allowed to become effective by any transferor agency or by a court of competent jurisdiction, in the performance of consumer financial protection functions that are transferred by this title and that are in effect on the day before the designated transfer date, shall continue in effect according to the terms of those orders, resolutions, determinations, agreements, and rules, and shall not be enforceable by or against the Bureau.

(i) IDENTIFICATION OF RULES CONTINUED.—Not later than the designated transfer date, the Bureau—

(1) shall, after consultation with the head of each transferor agency, identify the rules continued under subsection (h) that will be enforced by the Bureau; and

(2) shall publish a list of such rules in the Federal Register.

(j) STATUS OF RULES PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED RULES.—Any proposed rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has proposed before the designated transfer date, but has not been published as a final rule before that date, shall be deemed to be a proposed rule of the Bureau.

(2) RULES NOT YET EFFECTIVE.—Any interim or final rule of a transferor agency which that agency, in performing consumer financial protection functions transferred by this title, has published before the designated transfer date, but which has not become effective before that date, shall become effective as a rule of the Bureau according to its terms.

SEC. 1064. TRANSFER OF CERTAIN PERSONNEL.

(a) IN GENERAL.—

(1) CERTAIN FEDERAL RESERVE SYSTEM EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Governors shall—

(i) jointly determine the number of employees of the Board of Governors necessary to perform or support the consumer financial protection functions of the Board of Governors that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Board of Governors for transfer to the Bureau, in a manner that the Bureau and the Board of Governors, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Board of Governors identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(C) FEDERAL RESERVE BANK EMPLOYEES.—Employees of any Federal reserve bank who, on the day before the designated transfer date, are performing consumer financial protection functions on behalf of the Board of Governors shall be treated as employees of the Board of Governors for purposes of subparagraphs (A) and (B).

(2) CERTAIN FDIC EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Board of Directors of the Federal Deposit Insurance Corporation shall—

(i) jointly determine the number of employees of that Corporation necessary to perform or support the consumer financial protection functions of the Corporation that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Corporation for transfer to the Bureau, in a manner that the Bureau and the Board of Directors of the Corporation, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Corporation identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(3) CERTAIN NCUA EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the National Credit Union Administration Board shall—

(i) jointly determine the number of employees of the National Credit Union Administration necessary to perform or support the consumer financial protection functions of the National Credit Union Administration that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the National Credit Union Administration for transfer to the Bureau, in a manner that the Bureau and the National Credit Union Administration Board, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the National Credit Union Administration identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(4) CERTAIN OFFICE OF THE COMPTROLLER OF THE CURRENCY EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Comptroller of the Currency shall—

(i) jointly determine the number of employees of the Office of the Comptroller of the Currency necessary to perform or support the consumer financial protection functions of the Office of the Comptroller of the Currency that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of the Comptroller of the Currency for transfer to the Bureau, in a manner that the Bureau and the Office of the Comptroller of the Currency, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of the Comptroller of the Currency identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(5) CERTAIN OFFICE OF THRIFT SUPERVISION EMPLOYEES TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Director of the Office of Thrift Supervision shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the consumer financial protection functions of the Office of Thrift Supervision that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Bureau, in a manner that the Bureau and the Office of Thrift Supervision, in their sole discretion, determine equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Office of Thrift Supervision identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(6) CERTAIN EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TRANSFERRED.—

(A) IDENTIFYING EMPLOYEES FOR TRANSFER.—The Bureau and the Secretary of the Department of Housing and Urban Development shall—

(i) jointly determine the number of employees of the Department of Housing and Urban Development necessary to perform or support the consumer protection functions of the Department that are transferred to the Bureau by this title; and

(ii) consistent with the number determined under clause (i), jointly identify employees of the Department of Housing and Urban Development for transfer to the Bureau in a manner that the Bureau and the Secretary of the Department of Housing and Urban Development, in their sole discretion, deem equitable.

(B) IDENTIFIED EMPLOYEES TRANSFERRED.—All employees of the Department of Housing and Urban Development identified under subparagraph (A)(ii) shall be transferred to the Bureau for employment.

(7) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE AND SENIOR EXECUTIVE SERVICE TRANSFERRED.—

(A) IN GENERAL.—In the case of an employee occupying a position in the excepted service or the Senior Executive Service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to subparagraph (B).

(B) DECLINING TRANSFERS ALLOWED.—An agency or entity may decline to make a transfer of authority under subparagraph (A) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character, and non-career positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under this section shall—

(1) be transferred not later than 90 days after the designated transfer date; and

(2) receive notice of a position assignment not later than 120 days after the effective date of his or her transfer.

(c) TRANSFER OF FUNCTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY OF THIS TITLE.—If any provisions of this title conflict with any protection provided to transferred employees under section 3503 of title 5, United States Code, the provisions of this title shall control.

(d) EQUAL STATUS AND TENURE POSITIONS.—

(1) EMPLOYEES TRANSFERRED FROM FDIC, FTC, HUD, NCUA, OCC, AND OTS.—Each employee transferred from the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or the Department of Housing and Urban Development shall be placed in a position at the Bureau with the same status and tenure as that employee held on the day before the designated transfer date.

(2) EMPLOYEES TRANSFERRED FROM THE FEDERAL RESERVE SYSTEM.—

(A) COMPARABILITY.—Each employee transferred from the Board of Governors or from a Federal reserve bank shall be placed in a position with the same status and tenure as that of an employee transferring to the Bureau from the Office of the Comptroller of the Currency who perform similar functions and have similar periods of service.

(B) SERVICE PERIODS CREDITED.—For purposes of this paragraph, periods of service with the Board of Governors or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(e) ADDITIONAL CERTIFICATION REQUIREMENTS LIMITED.—Examiners transferred to the Bureau are not subject to any additional certification requirements before being placed in a comparable examiner position at the Bureau examining the same types of institutions as they examined before they were transferred.

(f) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee holding a permanent position on the day before the designated transfer date may not, during the 2-year period beginning on the designated transfer date, be involuntarily separated, or involuntarily reassigned outside his or her locality pay area, as defined by the Office of Personnel Management.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau—

(A) to separate an employee for cause or for unacceptable performance;

(B) to terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character; or

(C) to reassign a supervisory employee outside his or her locality pay area, as defined by the Office of Personnel Management, when the Bureau determines that the reassignment is necessary for the efficient operation of the Bureau.

(g) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), each transferred employee shall, during the 2-year period beginning on the designated transfer date, receive pay at a rate equal to not less than the basic rate of pay (including any geographic differential) that the employee received during the pay period immediately preceding the date of transfer.

(2) EXCEPTIONS.—Paragraph (1) does not limit the right of the Bureau to reduce the rate of basic pay of a transferred employee—

(A) for cause;

(B) for unacceptable performance; or

(C) with the consent of the employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—Paragraph (1) applies to a transferred employee only while that employee remains employed by the Bureau.

(4) PAY INCREASES PERMITTED.—Paragraph (1) does not limit the authority of the Bureau to increase the pay of a transferred employee.

(h) REORGANIZATION.—

(1) BETWEEN 1ST AND 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, during the 2-year period beginning 1 year after the designated transfer date, that a reorganization of the staff of the Bureau is required—

(i) that reorganization shall be deemed a ''major reorganization'' for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code;

(ii) before the reorganization occurs, all employees in the same locality pay area as defined by the Office of Personnel Management shall be placed in a uniform position classification system; and

(iii) any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall—

(I) establish competitive areas (as that term is defined in regulations issued by the Office of Personnel Management) to include at a minimum all employees in the same locality pay area as defined by the Office of Personnel Management;

(II) establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to whether the particular employees have been appointed to positions in the competitive service or the excepted service; and

(III) afford employees appointed to positions in the excepted service (other than to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character) the same assignment rights to positions within the Bureau as employees appointed to positions in the competitive service.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(2) AFTER 3RD YEAR.—

(A) IN GENERAL.—If the Bureau determines, at any time after the 3-year period beginning on the designated transfer date, that a reorganization of the staff of the Bureau is required, any resulting reduction in force shall be governed by the provisions of chapter 35 of title 5, United States Code, except that the Bureau shall establish competitive levels (as that term is defined in regulations issued by the Office of Personnel Management) without regard to types of appointment held by particular employees transferred under this section.

(B) SERVICE CREDIT FOR REDUCTIONS IN FORCE.—For purposes of this paragraph, periods of service with a Federal home loan bank, a joint office of the Federal home loan banks, the Board of Governors, a Federal reserve bank, the Federal Deposit Insurance Corporation, or the National Credit Union Administration shall be credited as periods of service with a Federal agency.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Except as provided in subparagraph (B), each transferred employee shall remain enrolled in his or her existing retirement plan, through any period of continuous employment with the Bureau.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under that plan.

(B) OPTION FOR EMPLOYEES TRANSFERRED FROM FEDERAL RESERVE SYSTEM TO BE SUBJECT TO FEDERAL EMPLOYEE RETIREMENT PROGRAM.—

(i) ELECTION.—Any transferred employee who was enrolled in a Federal Reserve System retirement plan on the day before his or her transfer to the Bureau may, during the 1-year period beginning 6 months after the designated transfer date, elect to be subject to the Federal employee retirement program.

(ii) EFFECTIVE DATE OF COVERAGE.—For any employee making an election under clause (i), coverage by the Federal employee retirement program shall begin 1 year after the designated transfer date.

(C) BUREAU PARTICIPATION IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN.—

(i) SEPARATE ACCOUNT IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN ESTABLISHED.—Notwithstanding any other provision of law, and subject to the terms and conditions of this section, a separate account in the Federal Reserve System retirement plan shall be established for Bureau employees who do not make the election under subparagraph (B).

(ii) FUNDS ATTRIBUTABLE TO TRANSFERRED EMPLOYEES REMAINING IN FEDERAL RESERVE SYSTEM RETIREMENT PLAN TRANSFERRED.—The proportionate share of funds in the Federal Reserve System retirement plan, including the proportionate share of any funding surplus in that plan, attributable to a transferred employee who does not make the election under subparagraph (B), shall be transferred to the account established under clause (i).

(iii) EMPLOYER CONTRIBUTIONS DEPOSITED.—The Bureau shall deposit into the account established under clause (i) the employer contributions that the Bureau makes on behalf of employees who do not make the election under subparagraph (B).

(iv) ACCOUNT ADMINISTRATION.—The Bureau shall administer the account established under clause (i) as a participating employer in the Federal Reserve System retirement plan.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term ''existing retirement plan'' means, with respect to any employee transferred under this section, the particular retirement plan (including the Financial Institutions Retirement Fund) and any associated thrift savings plan of the agency or Federal reserve bank from which the employee was transferred, in which the employee was enrolled on the day before the designated transfer date; and

(ii) the term ''Federal employee retirement program'' means the retirement program for Federal employees established by chapter 84 of title 5, United States Code.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) DURING 1ST YEAR.—

(i) EXISTING PLANS CONTINUE.—Each transferred employee may, for 1 year after the designated transfer date, retain membership in any other employee benefit program of the agency or bank from which the employee transferred, including a dental, vision, long term care, or life insurance program, to which the employee belonged on the day before the designated transfer date.

(ii) EMPLOYER CONTRIBUTION.—The Bureau shall reimburse the agency or bank from which an employee was transferred for any cost incurred by that agency or bank in continuing to extend coverage in the benefit program to the employee, as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Bureau decides not to continue participation in any dental, vision, or life insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Bureau takes effect, elect to enroll, without regard to any regularly scheduled open season, in—

(i) the enhanced dental benefits established by chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established by chapter 89B of title 5, United States Code; or

(iii) the Federal Employees Group Life Insurance Program established by chapter 87 of title 5, United States Code, without regard to any requirement of insurability.

(C) LONG TERM CARE INSURANCE AFTER 1ST YEAR.—If, after the 1-year period beginning on the designated transfer date, the Bureau decides not to continue participation in any long term care insurance program of an agency or bank from which an employee transferred, a transferred employee who is a member of such a program may, before the decision of the Bureau takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established by chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member (as defined in part 875, title 5, Code of Federal Regulations).

(D) EMPLOYEE CONTRIBUTION.—An individual enrolled in the Federal Employees Health Benefits program shall pay any employee contribution required by the plan.

(E) ADDITIONAL FUNDING.—The Bureau shall transfer to the Federal Employees Health Benefits Fund established under section 8909 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this paragraph.

(F) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a health benefits plan administered by a transferor agency or a Federal reserve bank, as the case may be, immediately before enrollment in a health benefits plan under chapter 89 of title 5, United States Code, shall be considered as enrollment in a health benefits plan under that chapter for purposes of section 8905(b)(1)(A) of title 5, United States Code.

(G) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant (as defined in section 8901(3) of title 5, United States Code) who is enrolled in a life insurance plan administered by a transferor agency on the day before the designated transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, and 8714c of title 5, United States Code, or in a life insurance plan established by the Bureau, without regard to any regularly scheduled open season and requirement of insurability.

(ii) EMPLOYEE CONTRIBUTION.—An individual enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(iii) ADDITIONAL FUNDING.—The Bureau shall transfer to the Employees' Life Insurance Fund established under section 8714 of title 5, United States Code, an amount determined by the Director of the Office of Personnel Management, after consultation with the Bureau and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing benefits under this subparagraph not otherwise paid for by the employee under clause (ii).

(iv) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For employees transferred under this title, enrollment in a life insurance plan administered by a transferor agency immediately before enrollment in a life insurance plan under chapter 87 of title 5, United States Code, shall be considered as enrollment in a life insurance plan under that chapter for purposes of section 8706(b)(1)(A) of title 5, United States Code.

(3) OPM RULES.—The Office of Personnel Management shall issue such rules as are necessary to carry out this subsection.

(j) IMPLEMENTATION OF UNIFORM PAY AND CLASSIFICATION SYSTEM.—Not later than 2 years after the designated transfer date, the Bureau shall implement a uniform pay and classification system for all employees transferred under this title.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Bureau—

(1) shall take no action that would unfairly disadvantage transferred employees relative to each other based on their prior employment by the Board of Governors, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks; and

(2) may take such action as is appropriate in individual cases so that employees transferred under this section receive equitable treatment, with respect to the status, tenure, pay, benefits (other than benefits under programs administered by the Office of Personnel Management), and accrued leave or vacation time of those employees, for prior periods of service with any Federal agency,

including the Board of Governors, the Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a Federal reserve bank, a Federal home loan bank, or a joint office of the Federal home loan banks.

(l) IMPLEMENTATION.—In implementing the provisions of this section, the Bureau shall coordinate with the Office of Personnel Management and other entities having expertise in matters related to employment to ensure a fair and orderly transition for affected employees.

SEC. 1065. INCIDENTAL TRANSFERS.

(a) INCIDENTAL TRANSFERS AUTHORIZED.—The Director of the Office of Management and Budget, in consultation with the Secretary, shall make such additional incidental transfers and dispositions of assets and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this title, as the Director may determine necessary to accomplish the purposes of this title.

(b) SUNSET.—The authority provided in this section shall terminate 5 years after the date of enactment of this Act.

SEC. 1066. INTERIM AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is authorized to perform the functions of the Bureau under this subtitle until the Director of the Bureau is confirmed by the Senate in accordance with section 1011.

(b) INTERIM ADMINISTRATIVE SERVICES BY THE DEPARTMENT OF THE TREASURY.—The Department of the Treasury may provide administrative services necessary to support the Bureau before the designated transfer date.

SEC. 1067. TRANSITION OVERSIGHT.

(a) PURPOSE.—The purpose of this section is to ensure that the Bureau—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) REPORTING REQUIREMENT.—

(1) IN GENERAL.—The Bureau shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) PLANS.—The plans described in this paragraph are as follows:

(A) TRAINING AND WORKFORCE DEVELOPMENT PLAN.—The Bureau shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) WORKPLACE FLEXIBILITIES PLAN.—The Bureau shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;

(iv) reemployed annuitants;

(v) part-time work;

(vi) job sharing;

(vii) parental leave benefits and childcare assistance;

(viii) domestic partner benefits;

(ix) other workplace flexibilities; or

(x) any combination of the items described in clauses (i) through (ix).

(C) RECRUITMENT AND RETENTION PLAN.—The Bureau shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—

(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;

(ii) streamlined employment application processes;

(iii) the provision of timely notification of the status of employment applications to applicants; and

(iv) the collection of information to measure indicators of hiring effectiveness.

(c) EXPIRATION.—The reporting requirement under subsection (b) shall terminate 5 years after the date of enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to affect—

(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, United States Code, that is in effect on the date of enactment of this Act; or

(2) the rights of employees under chapter 71 of title 5, United States Code.

Subtitle G—Regulatory Improvements

SEC. 1071. GAO STUDY ON THE EFFECTIVENESS AND IMPACT OF VARIOUS APPRAISAL METHODS.

(a) IN GENERAL.—The Government Accountability Office shall conduct a study on the effectiveness and impact of various appraisal methods, including the cost approach, the comparative sales approach, the income approach, and others that may be available.

(b) STUDY.—Not later than—

(1) 1 year after the date of enactment of this Act, the Government Accountability Office shall submit a study to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives;

(2) 90 days after the date of enactment of this Act, the Government Accountability Office shall provide a report on the status of the study and any preliminary findings to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(c) CONTENT OF STUDY.—The study required by this section shall include an examination of—

(1) the prevalence, alone or in combination, of these approaches in purchase-money and refinance mortgage transactions;

(2) the accuracy of the various approaches in assessing the property as collateral;

(3) whether and how the approaches contributed to price speculation in the previous cycle;

(4) the costs to consumers of these approaches;

(5) the disclosure of fees to consumers in the appraisal process;

(6) to what extent such approaches may be influenced by a conflict of interest between the mortgage lender and the appraiser and the mechanism by which the lender selects and compensates the appraiser; and

(7) the suitability of appraisal approaches in rural versus urban areas.

SEC. 1072. PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.

(a) IN GENERAL.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129A (15 U.S.C. 1639a) the following new section:

"SEC. 129B. PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.

''(a) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not a qualified mortgage may not contain terms under which a consumer is required to pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

''(b) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—

''(1) IN GENERAL.—A qualified mortgage may not contain terms under which a consumer is required to pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of—

''(A) during the 1-year period beginning on the date on which the loan is consummated, an amount equal to 3 percent of the outstanding balance on the loan;

''(B) during the 1-year period beginning immediately after the end of the period described in subparagraph (A), an amount equal to 2 percent of the outstanding balance on the loan; and

''(C) during the 1-year period beginning immediately after the end of the 1-year period described in subparagraph (B), an amount equal to 1 percent of the outstanding balance on the loan.

''(2) PROHIBITION.—After the end of the 3-year period beginning on the date on which the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

''(c) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan, without offering to the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

''(d) PROHIBITIONS ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a residential mortgage loan—

''(1) to structure a loan transaction as an open end consumer credit plan or another form of loan for the purpose and with the intent of evading the provisions of this section; or

''(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this section.

''(e) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

''(1) shall publish, and update at least weekly, average prime offer rates;

''(2) may publish multiple rates based on varying types of mortgage transactions; and

''(3) shall adjust the thresholds of 1.50 percentage points in subsection (g)(3)(A)(v)(I), 2.50 percentage points in subsection (g)(3)(A)(v)(II), and 3.50 percentage points in subsection (g)(3)(A)(v)(III), as necessary to reflect significant changes in market conditions and to effectuate the purposes of this section.

''(f) REGULATIONS.—

''(1) IN GENERAL.—The Bureau shall prescribe regulations to carry out this section.

''(2) REVISION OF SAFE HARBOR CRITERIA.—The Bureau may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage, upon a finding that such regulations are necessary or appropriate—

''(A) to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section;

''(B) to effectuate the purposes of this section;

''(C) to prevent circumvention or evasion thereof; or

''(D) to facilitate compliance with this section.

''(3) INTERAGENCY HARMONIZATION.—

''(A) DETERMINATION OF QUALIFYING MORTGAGE TREATMENT.—The agencies and officials described in subparagraph (B) shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be,

that are qualified mortgages for purposes of this section, upon a finding that such rules are consistent with the purposes of this section or are appropriate to prevent circumvention or evasion thereof or to facilitate compliance with this section.

''(B) AGENCIES AND OFFICIALS.—The agencies and officials described in this subparagraph are—

''(i) the Secretary of the Department of Housing and Urban Development, with regard to mortgages insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

''(ii) the Secretary of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs;

''(iii) the Secretary of Agriculture, with regard to loans guaranteed by the Secretary of Agriculture pursuant to section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h));

''(iv) the Federal Housing Finance Agency, with regard to loans meeting the conforming loan standards of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation; and

''(v) the Rural Housing Service, with regard to loans insured by the Rural Housing Service.

''(4) IMPLEMENTATION.—Regulations required or authorized to be prescribed under this subsection—

''(A) shall be prescribed in final form before the end of the 12-month period beginning on the date of enactment of this section; and

''(B) shall take effect not later than 18 months after the date of enactment of this section.

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

''(1) AVERAGE PRIME OFFER RATE.—The term 'average prime offer rate' means an annual percentage rate that is derived from average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics.

''(2) PREPAYMENT PENALTY.—The term 'prepayment penalty' means any penalty for paying all or part of the principal on an extension of credit before the date on which the principal is due, including a computation of a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined in section 933(d) of the Housing and Community Development Act of 1992 (15 U.S.C. 1615(d)).

''(3) QUALIFIED MORTGAGE.—The term 'qualified mortgage' means—

''(A) any residential mortgage loan—

''(i) that does not have an adjustable rate;

''(ii) that does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Bureau;

''(iii) that does not provide for a repayment schedule that results in negative amortization at any time;

''(iv) for which the terms are fully amortizing and which does not result in a balloon payment, where a 'balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

''(v) which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date on which the interest rate is set—

''(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date on which such interest rate is set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

''(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date on which such interest rate is set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); or

''(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

''(vi) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

''(vii) for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

''(viii) that does not cause the total monthly debts of the consumer, including amounts under the loan, to exceed a percentage established by regulation of the monthly gross income of the consumer, or such other maximum percentage of such income, as may be prescribed by regulation under subsection (g), which rules shall take into consideration the income of the consumer available to pay regular expenses after payment of all installment and revolving debt;

''(ix) for which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where the term 'points and fees' means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

''(x) for which the term of the loan does not exceed 30 years, except as such term may be extended under subsection (g); and

''(B) any reverse mortgage that is insured by the Federal Housing Administration or complies with the condition established in subparagraph (A)(v).

''(4) RESIDENTIAL MORTGAGE LOAN.—The term 'residential mortgage loan' means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.''.

(b) CONFORMING AMENDMENTS.—Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended—

(1) by striking paragraph (2);

(2) by striking ''(1) IN GENERAL.—''; and

(3) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively.

SEC. 1073. ASSISTANCE FOR ECONOMICALLY VULNERABLE INDIVIDUALS AND FAMILIES.

(a) HERA AMENDMENTS.—Section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) is amended—

(1) in subsection (a), by inserting in each of paragraphs (1), (2), (3), and (4) ''or economically vulnerable individuals and families'' after ''homebuyers'' each place that term appears;

(2) in subsection (b)(1), by inserting ''or economically vulnerable individuals and families'' after ''homebuyers'';

(3) in subsection (c)(1)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(C) a nonprofit corporation that—

''(i) is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986; and

''(ii) specializes or has expertise in working with economically vulnerable individuals and families, but whose primary purpose is not provision of credit counseling services.''; and

(4) in subsection (d)(1), by striking ''not more than 5''.

(b) APPLICABILITY.—Amendments made by subsection (a) shall not apply to programs authorized by section 1132 of the Housing and Economic Recovery Act of 2008 (12 U.S.C. 1701x note) that are funded with appropriations prior to fiscal year 2011.

SEC. 1074. REMITTANCE TRANSFERS.

(a) TREATMENT OF REMITTANCE TRANSFERS.—The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) in section 902(b) (15 U.S.C. 1693(b)), by inserting ''and remittance'' after ''electronic fund'';

(2) by redesignating sections 919, 920, 921, and 922 as sections 920, 921, 922, and 923, respectively; and

(3) by inserting after section 918 the following:

''SEC. 919. REMITTANCE TRANSFERS.

''(a) DISCLOSURES REQUIRED FOR REMITTANCE TRANSFERS.—

''(1) IN GENERAL.—Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board.

''(2) STOREFRONT DISCLOSURES.—

''(A) IN GENERAL.—At every physical storefront location owned or controlled by a remittance transfer provider (with respect to remittance transfer activities), the remittance transfer provider shall prominently post, and update daily, a notice describing a model transfer for the amounts of $100 and $200 (in United States dollars) showing the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged for the 3 currencies to which that particular storefront sends the greatest number of remittance transfer payments, measured irrespective of the value of such payments. The values shall include all fees charged by the remittance transfer provider, taken out of the $100 and $200 amounts.

''(B) ELECTRONIC DISCLOSURE.—Subject to the rules prescribed by the Board, a remittance transfer provider shall prominently post, and update daily, a notice describing a model transfer, as described in subparagraph (A), on the Internet site owned or controlled by the remittance transfer provider which senders use to electronically conduct remittance transfer transactions.

''(3) SPECIFIC DISCLOSURES.—In addition to any other disclosures applicable under this title, and subject to paragraph (4), a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

''(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing the amount of currency that will be sent to the designated recipient, using the values of the currency into which the funds will be exchanged; and

''(B) at the time at which the sender makes payment in connection with the remittance transfer—

''(i) a receipt showing—

''(I) the information described in subparagraph (A);

''(II) the promised date of delivery to the designated recipient; and

''(III) the name and either the telephone number or the address of the designated recipient; and

''(ii) a statement containing—

''(I) information about the rights of the sender under this section regarding the resolution of errors; and

''(II) appropriate contact information for—

''(aa) the remittance transfer provider; and

''(bb) each State or Federal agency supervising the remittance transfer provider, including its State licensing authority or Federal regulator, as applicable.

''(4) REQUIREMENTS RELATING TO DISCLOSURES.—With respect to each disclosure required to be provided under paragraph (3), and subject to paragraph (5), a remittance transfer provider shall—

''(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (3), and an error resolution statement, as required by subsection (c), that clearly and conspicuously describe the information required to be disclosed therein; and

''(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

''(5) EXEMPTION AUTHORITY.—The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

''(A) paragraph (3)(A) orally, if the transaction is conducted entirely by telephone;

''(B) paragraph (3)(B), by mailing the documents required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, if the transaction is conducted entirely by telephone;

''(C) subparagraphs (A) and (B) of paragraph (3) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer;

''(D) paragraph (3)(A), if a sender initiates a transaction to one of those countries displayed, in the exact amount of the transfers displayed pursuant to paragraph (2), if the Board finds it to be appropriate; and

''(E) paragraph (3)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act, if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

''(b) FOREIGN LANGUAGE DISCLOSURES.—

''(1) IN GENERAL.—The disclosures required under this section shall be made in English and in each of the same foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

''(2) ACCOUNTS.—In the case of a sender who holds a demand deposit, savings deposit, or other asset account with the remittance transfer provider (other than an occasional or incidental credit balance under an open end credit plan, as defined in section 103(i) of the Truth in Lending Act), the disclosures required under this section shall be made in the language or languages principally used by the remittance transfer provider to communicate to the sender with respect to the account.

''(c) REMITTANCE TRANSFER ERRORS.—

''(1) ERROR RESOLUTION.—

''(A) IN GENERAL.—If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

''(B) REMEDIES.—Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

''(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

''(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

''(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or

''(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

''(2) RULES.—The Board shall establish, by rule issued not later than 1 calendar year after the date of enactment of the Restoring American Financial Stability Act of 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

''(A) of the complaint of the sender;

''(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

''(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

''(d) APPLICABILITY OF THIS TITLE.—

''(1) IN GENERAL.—A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed—

''(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder; or

''(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

''(e) ACTS OF AGENTS.—A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

''(f) DEFINITIONS.—As used in this section—

''(1) the term 'designated recipient' means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

''(2) the term 'remittance transfer' means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903;

''(3) the term 'remittance transfer provider' means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

''(4) the term 'sender' means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.''.

(b) AUTOMATED CLEARINGHOUSE SYSTEM.—

(1) EXPANSION OF SYSTEM.—The Board of Governors shall work with the Federal reserve banks to expand the use of the automated clearinghouse system for remittance transfers to foreign countries, with a focus on countries that receive significant remittance transfers from the United States, based on—

(A) the number, volume, and size of such transfers;

(B) the significance of the volume of such transfers relative to the external financial flows of the receiving country, including—

(i) the total amount transferred; and

(ii) the total volume of payments made by United States Government agencies to beneficiaries and retirees living abroad;

(C) the feasibility of such an expansion; and

(D) the ability of the Federal Reserve System to establish payment gateways in different geographic regions and currency zones to receive remittance transfers and route them through the payments systems in the destination countries.

(2) REPORT TO CONGRESS.—Not later than one calendar year after the date of enactment of this Act, and on April 30 biennially thereafter during the 10-year period beginning on that date of enactment, the Board of Governors shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the status of the automated clearinghouse system and its progress in complying with the requirements of this subsection. The report shall include an analysis of adoption rates of International ACH Transactions rules and formats, the efficacy of increasing adoption rates, and potential recommendations to increase adoption.

(c) EXPANSION OF FINANCIAL INSTITUTION PROVISION OF REMITTANCE TRANSFERS.—

(1) PROVISION OF GUIDELINES TO INSTITUTIONS.—Each of the Federal banking agencies and the National Credit Union Administration shall provide guidelines to financial institutions under the jurisdiction of the agency regarding the offering of low-cost remittance transfers and no-cost or low-cost basic consumer accounts, as well as agency services to remittance transfer providers.

(2) ASSISTANCE TO FINANCIAL LITERACY COMMISSION.—As part of its duties as members of the Financial Literacy and Education Commission, the Bureau, the Federal banking

agencies, and the National Credit Union Administration shall assist the Financial Literacy and Education Commission in executing the Strategy for Assuring Financial Empowerment (or the ''SAFE Strategy''), as it relates to remittances.

(d) FEDERAL CREDIT UNION ACT CONFORMING AMENDMENT.—Paragraph (12) of section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended to read as follows:

''(12) in accordance with regulations prescribed by the Board—

''(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers);

''(B) to provide remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act, to persons in the field of membership; and

''(C) to cash checks and money orders for persons in the field of membership for a fee;''.

Subtitle H—Conforming Amendments

SEC. 1081. AMENDMENTS TO THE INSPECTOR GENERAL ACT.

Effective on the date of enactment of this Act, the Inspector General Act of 1978 (5 U.S.C. App. 3) is amended—

(1) in section 8G(a)(2), by inserting ''and the Bureau of Consumer Financial Protection'' after ''Board of Governors of the Federal Reserve System'';

(2) in section 8G(c), by adding at the end the following: ''For purposes of implementing this section, the Chairman of the Board of Governors of the Federal Reserve System shall appoint the Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection. The Inspector General of the Board of Governors of the Federal Reserve System and the Bureau of Consumer Financial Protection shall have all of the authorities and responsibilities provided by this Act with respect to the Bureau of Consumer Financial Protection, as if the Bureau were part of the Board of Governors of the Federal Reserve System.''; and

(3) in section 8G(g)(3), by inserting ''and the Bureau of Consumer Financial Protection'' after ''Board of Governors of the Federal Reserve System'' the first place that term appears.

SEC. 1082. AMENDMENTS TO THE PRIVACY ACT OF 1974.

Effective on the date of enactment of this Act, section 552a of title 5, United States Code, is amended by adding at the end the following:

''(w) APPLICABILITY TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as provided in the Consumer Financial Protection Act of 2010, this section shall apply with respect to the Bureau of Consumer Financial Protection.''.

SEC. 1083. AMENDMENTS TO THE ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT OF 1982.

(a) IN GENERAL.—The Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) is amended—

(1) in section 803 (12 U.S.C. 3802(1)), by striking ''1974'' and all that follows through ''described and defined'' and inserting the following: ''1974), in which the interest rate or finance charge may be adjusted or renegotiated, described and defined''; and

(2) in section 804 (12 U.S.C. 3803)—

(A) in subsection (a)—

(i) in each of paragraphs (1), (2), and (3), by inserting after ''transactions made'' each place that term appears ''on or before the designated transfer date, as determined under section 1062 of the Consumer Financial Protection Act of 2010,'';

(ii) in paragraph (2), by striking ''and'' at the end;

(iii) in paragraph (3), by striking the period at the end and inserting ''; and''; and

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

''(4) with respect to transactions made after the designated transfer date, only in accordance with regulations governing alternative mortgage transactions, as issued by the Bureau of Consumer Financial Protection for federally chartered housing creditors, in accordance with the rulemaking authority granted to the Bureau of Consumer Financial Protection with regard to federally chartered housing creditors under provisions of law other than this section.'';

(B) by striking subsection (c) and inserting the following:

''(c) PREEMPTION OF STATE LAW.—An alternative mortgage transaction may be made by a housing creditor in accordance with this section, notwithstanding any State constitution, law, or regulation that prohibits an alternative mortgage transaction. For purposes of this subsection, a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''; and

(C) by adding at the end the following:

''(d) BUREAU ACTIONS.—The Bureau of Consumer Financial Protection shall—

''(1) review the regulations identified by the Comptroller of the Currency and the National Credit Union Administration, (as those rules exist on the designated transfer date), as applicable under paragraphs (1) through (3) of subsection (a);

''(2) determine whether such regulations are fair and not deceptive and otherwise meet the objectives of the Consumer Financial Protection Act of 2010; and

''(3) promulgate regulations under subsection (a)(4) after the designated transfer date.

''(e) DESIGNATED TRANSFER DATE.—As used in this section, the term 'designated transfer date' means the date determined under section 1062 of the Consumer Financial Protection Act of 2010.''.

(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective on the designated transfer date.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) shall not affect any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 et seq.) and entered into on or before the designated transfer date.

SEC. 1084. AMENDMENTS TO THE ELECTRONIC FUND TRANSFER ACT.

The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'', except in section 918 (as so designated by the Credit Card Act of 2009) (15 U.S.C. 1693o);

(2) in section 903 (15 U.S.C. 1693a), by striking paragraph (3) and inserting the following:

''(3) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 916(d) (as so designated by section 401 of the Credit CARD Act of 2009) (15 U.S.C. 1693m)—

(A) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''; and

(4) in section 918 (as so designated by the Credit CARD Act of 2009) (15 U.S.C. 1693o)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.''.

SEC. 1085. AMENDMENTS TO THE EQUAL CREDIT OPPORTUNITY ACT.

The Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 702 (15 U.S.C. 1691a), by striking subsection (c) and inserting the following:

''(c) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 703 (15 U.S.C. 1691b)—

(A) by striking the section heading and inserting the following:

''SEC. 703. PROMULGATION OF REGULATIONS BY THE BUREAU.'';

(B) by striking ''(a) REGULATIONS.—'';

(C) by striking subsection (b);

(D) by redesignating paragraphs (1) through (5) as subsections (a) through (e), respectively; and

(E) in subsection (c), as so redesignated, by striking ''paragraph (2)'' and inserting ''subsection (b)'';

(4) in section 704 (15 U.S.C. 1691c)—

(A) in subsection (a)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Protection Financial Protection Act of 2010''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) Subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.'';

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under

the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce any rule prescribed by the Bureau under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(C) in subsection (d), by striking ''Board'' and inserting ''Bureau''; and

(5) in section 706(e) (15 U.S.C. 1691e(e))—

(A) in the subsection heading—

(i) by striking ''BOARD'' each place that term appears and inserting ''BUREAU''; and

(ii) by striking ''FEDERAL RESERVE SYSTEM'' and inserting ''BUREAU OF CONSUMER FINANCIAL PROTECTION''; and

(B) by striking ''Federal Reserve System'' and inserting ''Bureau of Consumer Financial Protection''.

SEC. 1086. AMENDMENTS TO THE EXPEDITED FUNDS AVAILABILITY ACT.

(a) AMENDMENT TO SECTION 603.—Section 603(d)(1) of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''.

(b) AMENDMENTS TO SECTION 604.—Section 604 of the Expedited Funds Availability Act (12 U.S.C. 4003) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in subsection (f), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f), by striking ''Board.'' each place that term appears and inserting the following: ''Board, jointly with the Director of the Bureau of Consumer Financial Protection.''.

(c) AMENDMENTS TO SECTION 605.—Section 605 of the Expedited Funds Availability Act (12 U.S.C. 4004) is amended—

(1) by inserting after ''Board'' each place that term appears, other than in the heading for section 605(f)(1), the following: '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) in subsection (f)(1), in the paragraph heading, by inserting ''AND BUREAU'' after ''BOARD''.

(d) AMENDMENTS TO SECTION 609.—Section 609 of the Expedited Funds Availability Act (12 U.S.C. 4008) is amended:

(1) in subsection (a), by inserting after ''Board'' the following '', jointly with the Director of the Bureau of Consumer Financial Protection,''; and

(2) by striking subsection (e) and inserting the following:

''(e) CONSULTATIONS.—In prescribing regulations under subsections (a) and (b), the Board and the Director of the Bureau of Consumer Financial Protection, in the case of subsection (a), and the Board, in the case of subsection (b), shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.''.

(e) EXPEDITED FUNDS AVAILABILITY IMPROVEMENTS.—Section 603 of the Expedited Funds Availability Act (12 U.S.C. 4002) is amended—

(1) in subsection (a)(2)(D), by striking ''$100'' and inserting ''$200''; and

(2) in subsection (b)(3)(C), in the subparagraph heading, by striking ''$100'' and inserting ''$200''; and

(3) in subsection (c)(1)(B)(iii), in the clause heading, by striking ''$100'' and inserting ''$200''.

(f) REGULAR ADJUSTMENTS FOR INFLATION.—Section 607 of the Expedited Funds Availability Act (12 U.S.C. 4006) is amended by adding at the end the following:

''(f) ADJUSTMENTS TO DOLLAR AMOUNTS FOR INFLATION.—The dollar amounts under this title shall be adjusted every 5 years after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $25.''.

SEC. 1087. AMENDMENTS TO THE FAIR CREDIT BILLING ACT.

The Fair Credit Billing Act (15 U.S.C. 1666–1666j) is amended by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1088. AMENDMENTS TO THE FAIR CREDIT REPORTING ACT AND THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT.

(a) FAIR CREDIT REPORTING ACT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(1) in section 603 (15 U.S.C. 1681a)—

(A) by redesignating subsections (w) and (x) as subsections (x) and (y), respectively; and

(B) by inserting after subsection (v) the following:

''(w) The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(2) except as otherwise specifically provided in this subsection—

(A) by striking ''Federal Trade Commission'' each place that term appears and inserting ''Bureau'';

(B) by striking ''FTC'' each place that term appears and inserting ''Bureau'';

(C) by striking ''the Commission'' each place that term appears and inserting ''the Bureau''; and

(D) by striking ''The Federal banking agencies, the National Credit Union Administration, and the Commission shall jointly'' each place that term appears and inserting ''The Bureau shall'';

(3) in section 603(k)(2) (15 U.S.C. 1681a(k)(2)), by striking ''Board of Governors of the Federal Reserve System'' and inserting ''Bureau'';

(4) in section 604(g) (15 U.S.C. 1681b(g))—

(A) in paragraph (3), by striking subparagraph (C) and inserting the following:

''(C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau (consistent with the enforcement authorities prescribed under section 621(b)), or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).'';

(B) by striking paragraph (5) and inserting the following:

''(5) REGULATIONS AND EFFECTIVE DATE FOR PARAGRAPH (2).—

''(A) REGULATIONS REQUIRED.—The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.''; and

(C) by striking paragraph (6);

(5) in section 611(e)(2) (15 U.S.C. 1681i(e)), by striking paragraph (2) and inserting the following:

''(2) EXCLUSION.—Complaints received or obtained by the Bureau pursuant to its investigative authority under the Consumer Financial Protection Act of 2010 shall not be subject to paragraph (1).'';

(6) in section 615(h)(6) (15 U.S.C. 1681m(h)(6)), by striking subparagraph (A) and inserting the following:

''(A) RULES REQUIRED.—The Bureau shall prescribe rules to carry out this subsection.'';

(7) in section 621 (15 U.S.C. 1681s)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission, with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers (except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010), including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this title.

''(2) PENALTIES.—

''(A) KNOWING VIOLATIONS.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this title, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this title. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

''(B) DETERMINING PENALTY AMOUNT.—In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

''(C) LIMITATION.—Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 623(a)(1), unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may

not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.'';

(8) by striking subsection (b) and inserting the following:

''(b) ENFORCEMENT BY OTHER AGENCIES.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title with respect to consumer reporting agencies, persons who use consumer reports from such agencies, persons who furnish information to such agencies, and users of information that are subject to section 615(d) shall be enforced under—

''(A) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

''(i) any national bank, and any Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

''(ii) any member bank of the Federal Reserve System (other than a national bank), a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), a commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25A of the Federal Reserve Act, by the Board of Governors of the Federal Reserve System; and

''(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and any insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

''(B) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(C) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

''(D) subtitle IV of title 49, United States Code, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

''(E) the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 et seq.), by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

''(F) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act;

''(G) the Commodity Exchange Act, with respect to a person subject to the jurisdiction of the Commodity Futures Trading Commission; and

''(H) the Federal securities laws, and any other laws that are subject to the jurisdiction of the Securities and Exchange Commission, with respect to a person that is subject to the jurisdiction of the Securities and Exchange Commission.

''(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).'';

(9) by striking subsection (e) and inserting the following:

''(e) REGULATORY AUTHORITY.—The Bureau shall prescribe such regulations as are necessary to carry out the purposes of this Act. The regulations prescribed by the Bureau under this subsection shall apply to any person that is subject to this Act, notwithstanding the enforcement authorities granted to other agencies under this section.''; and

(10) in section 623 (15 U.S.C. 1681s–2)—

(A) in subsection (a)(7), by striking subparagraph (D) and inserting the following:

''(D) MODEL DISCLOSURE.—

''(i) DUTY OF BUREAU.—The Bureau shall prescribe a brief model disclosure that a financial institution may use to comply with subparagraph (A), which shall not exceed 30 words.

''(ii) USE OF MODEL NOT REQUIRED.—No provision of this paragraph may be construed to require a financial institution to use any such model form prescribed by the Bureau.

''(iii) COMPLIANCE USING MODEL.—A financial institution shall be deemed to be in compliance with subparagraph (A) if the financial institution uses any model form prescribed by the Bureau under this subparagraph, or the financial institution uses any such model form and rearranges its format.''; and

(B) by striking subsection (e) and inserting the following:

''(e) ACCURACY GUIDELINES AND REGULATIONS REQUIRED.—

''(1) GUIDELINES.—The Bureau shall, with respect to persons or entities that are subject to the enforcement authority of the Bureau under section 621—

''(A) establish and maintain guidelines for use by each person that furnishes information to a consumer reporting agency regarding the accuracy and integrity of the information relating to consumers that such entities furnish to consumer reporting agencies, and update such guidelines as often as necessary; and

''(B) prescribe regulations requiring each person that furnishes information to a consumer reporting agency to establish reasonable policies and procedures for implementing the guidelines established pursuant to subparagraph (A).

''(2) CRITERIA.—In developing the guidelines required by paragraph (1)(A), the Bureau shall—

''(A) identify patterns, practices, and specific forms of activity that can compromise the accuracy and integrity of information furnished to consumer reporting agencies;

''(B) review the methods (including technological means) used to furnish information relating to consumers to consumer reporting agencies;

''(C) determine whether persons that furnish information to consumer reporting agencies maintain and enforce policies to ensure the accuracy and integrity of information furnished to consumer reporting agencies; and

''(D) examine the policies and processes that persons that furnish information to consumer reporting agencies employ to conduct reinvestigations and correct inaccurate information relating to consumers that has been furnished to consumer reporting agencies.''.

(b) FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003.—Section 214(b)(1) of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681s–3 note) is amended by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—Regulations to carry out section 624 of the Fair Credit Reporting Act (15 U.S.C. 1681s–3), shall be prescribed, as described in paragraph (2), by—

''(A) the Commodity Futures Trading Commission, with respect to entities subject to its enforcement authorities;

''(B) the Securities and Exchange Commission, with respect to entities subject to its enforcement authorities; and

''(C) the Bureau, with respect to other entities subject to this Act.''.

SEC. 1089. AMENDMENTS TO THE FAIR DEBT COLLECTION PRACTICES ACT.

The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by striking ''Commission'' each place that term appears and inserting ''Bureau'';

(2) in section 803 (15 U.S.C. 1692a)—

(A) by striking paragraph (1) and inserting the following:

''(1) The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(3) in section 814 (15 U.S.C. 1692l)—

(A) by striking subsection (a) and inserting the following:

''(a) FEDERAL TRADE COMMISSION.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with this title shall be enforced by the Federal Trade Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under subsection (b). For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.''; and

(B) in subsection (b)—

(i) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance''; and

(ii) by striking paragraph (2) and inserting the following:

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;''; and

(4) in subsection (d), by striking ''Neither the Commission'' and all that follows through the end of the subsection and inserting the following: ''The Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this Act.''.

SEC. 1090. AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE ACT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 8(t) (12 U.S.C. 1818(t)), by adding at the end the following:

''(6) REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.''; and

(2) in section 43 (12 U.S.C. 1831t)—

(A) in subsection (c), by striking ''Federal Trade Commission'' and inserting ''Bureau'';

(B) in subsection (d), by striking ''Federal Trade Commission'' and inserting ''Bureau'';

(C) in subsection (e)—

(i) in paragraph (2), by striking ''Federal Trade Commission'' and inserting ''Bureau''; and

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

''(5) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.''; and

(D) in subsection (f)—

(i) by striking paragraph (1) and inserting the following:

''(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.''; and

(ii) in paragraph (2), by striking subparagraph (C) and inserting the following:

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.''.

SEC. 1091. AMENDMENTS TO THE GRAMM-LEACH-BLILEY ACT.

Title V of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.) is amended—

(1) in section 504(a)(1) (15 U.S.C. 6804(a)(1))—

(A) by striking ''The Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury,'' and inserting ''The Bureau of Consumer Financial Protection and''; and

(B) by striking '', and the Federal Trade Commission'';

(2) in section 505(a) (15 U.S.C. 6805(a))—

(A) by striking ''This subtitle'' and all that follows through ''as follows:'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, this subtitle and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:'';

(B) in paragraph (1)—

(i) in subparagraph (B), by inserting ''and'' after the semicolon;

(ii) in subparagraph (C), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (D); and

(C) by adding at the end the following:

''(8) Under the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau under that Act, but not with respect to the standards under section 501.''; and

(3) in section 505(b)(1) (15 U.S.C. 6805(b)(1)), by inserting '', other than the Bureau of Consumer Financial Protection,'' after ''subsection (a)''.

SEC. 1092. AMENDMENTS TO THE HOME MORTGAGE DISCLOSURE ACT.

The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—

(1) except as otherwise specifically provided in this section, by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 303 (12 U.S.C. 2802)—

(A) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively; and

(B) by inserting before paragraph (2) the following:

''(1) the term 'Bureau' means the Bureau of Consumer Financial Protection;'';

(3) in section 304 (12 U.S.C. 2803)—

(A) in subsection (b)—

(i) in paragraph (4), by inserting ''age,'' before ''and gender'';

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

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

(iv) by adding at the end the following:

''(5) the number and dollar amount of mortgage loans grouped according to measurements of—

''(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

''(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

''(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

''(D) such other information as the Bureau may require; and

''(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

''(A) the value of the real property pledged or proposed to be pledged as collateral;

''(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

''(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

''(D) the actual or proposed term in months of the mortgage loan;

''(E) the channel through which application was made, including retail, broker, and other relevant categories;

''(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

''(G) as the Bureau may determine to be appropriate, a universal loan identifier;

''(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

''(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe, except that the Bureau shall modify or require modification of credit score data that is or will be available to the public to protect the compelling privacy interest of the mortgage applicant or mortgagors; and

''(J) such other information as the Bureau may require.'';

(B) in subsection (i), by striking ''subsection (b)(4)'' and inserting ''subsections (b)(4), (b)(5), and (b)(6)'';

(C) in subsection (j)—

(i) in paragraph (1), by striking ''(as'' and inserting ''(containing loan-level and application-level information relating to disclosures required under subsections (a) and (b) and as otherwise'';

(ii) by striking paragraph (3) and inserting the following:

''(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require''; and

(iii) in paragraph (2)(A), by striking ''in the format in which such information is maintained by the institution'' and inserting ''in such formats as the Bureau may require'';

(D) in subsection (m), by striking paragraph (2) and inserting the following:

''(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require'';

(E) by striking subsection (h) and inserting the following:

''(h) SUBMISSION TO AGENCIES.—

''(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in cooperation with other appropriate regulators described in paragraph (2), shall develop regulations that—

''(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate regulatory agency, and the procedures for disclosing the information to the public;

''(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

''(C) require disclosure of the class of the purchaser of such loans; and

''(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans.

''(2) OTHER APPROPRIATE AGENCIES.—The appropriate regulators described in this paragraph are—

''(A) the Office of the Comptroller of the Currency (hereafter referred to in this Act as 'Comptroller') for national banks and Federal branches, Federal agencies of foreign banks, and savings associations;

''(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

''(C) the National Credit Union Administration Board for credit unions; and

''(D) the Secretary of Housing and Urban Development for other lending institutions not regulated by the agencies referred to in subparagraphs (A) through (C).''; and

(F) by adding at the end the following:

''(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.'';

(4) in section 305 (12 U.S.C. 2804)—

(A) by striking subsection (b) and inserting the following:

''(b) POWERS OF CERTAIN OTHER AGENCIES.—

''(1) IN GENERAL.—Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements of this title shall be enforced—

''(A) under section 8 of the Federal Deposit Insurance Act, in the case of—

''(i) any national bank, and any Federal branch or Federal agency of a foreign bank,

by the Office of the Comptroller of the Currency;

''(ii) any member bank of the Federal Reserve System (other than a national bank), branch or agency of a foreign bank (other than a Federal branch, Federal agency, and insured State branch of a foreign bank), commercial lending company owned or controlled by a foreign bank, and any organization operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

''(iii) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System), any mutual savings bank as, defined in section 3(f) of the Federal Deposit Insurance Act (12 U.S.C. 1813(f)), any insured State branch of a foreign bank, and any other depository institution not referred to in this paragraph or subparagraph (B) or (C), by the Federal Deposit Insurance Corporation;

''(B) under subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(C) under the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any insured credit union; and

''(D) with respect to other lending institutions, by the Secretary of Housing and Urban Development.

''(2) INCORPORATED DEFINITIONS.—The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the same meanings as in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).''; and

(B) by adding at the end the following:

''(d) OVERALL ENFORCEMENT AUTHORITY OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under this title is committed to each of the agencies under subsection (b). The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of this title.'';

(5) in section 306 (12 U.S.C. 2805(b)), by striking subsection (b) and inserting the following:

''(b) EXEMPTION AUTHORITY.—The Bureau may, by regulation, exempt from the requirements of this title any State-chartered depository institution within any State or subdivision thereof, if the agency determines that, under the law of such State or subdivision, that institution is subject to requirements that are substantially similar to those imposed under this title, and that such law contains adequate provisions for enforcement. Notwithstanding any other provision of this subsection, compliance with the requirements imposed under this subsection shall be enforced by the Office of the Comptroller of the Currency under section 8 of the Federal Deposit Insurance Act, in the case of national banks and savings associations, the deposits of which are insured by the Federal Deposit Insurance Corporation.''; and

(6) by striking section 307 (12 U.S.C. 2806) and inserting the following:

''SEC. 307. COMPLIANCE IMPROVEMENT METHODS.

''(a) IN GENERAL.—

''(1) CONSULTATION REQUIRED.—The Director of the Bureau of Consumer Financial Protection, with the assistance of the Secretary, the Director of the Bureau of the Census, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and such other persons as the Bureau deems appropriate, shall develop or assist in the improvement of, methods of matching addresses and census tracts to facilitate compliance by depository institutions in as economical a manner as possible with the requirements of this title.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this subsection.

''(3) CONTRACTING AUTHORITY.—The Director of the Bureau of Consumer Financial Protection is authorized to utilize, contract with, act through, or compensate any person or agency in order to carry out this subsection.

''(b) RECOMMENDATIONS TO CONGRESS.—The Director of the Bureau of Consumer Financial Protection shall recommend to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, such additional legislation as the Director of the Bureau of Consumer Financial Protection deems appropriate to carry out the purpose of this title.''.

SEC. 1093. AMENDMENTS TO THE HOMEOWNERS PROTECTION ACT OF 1998.

Section 10 of the Homeowners Protection Act of 1998 (12 U.S.C. 4909) is amended—

(1) in subsection (a)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (2), by striking ''and'' at the end;

(C) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(4) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau of Consumer Financial Protection.''; and

(2) in subsection (b)(2), by inserting before the period at the end the following: '', subject to subtitle B of the Consumer Financial Protection Act of 2010''.

SEC. 1094. AMENDMENTS TO THE HOME OWNERSHIP AND EQUITY PROTECTION ACT OF 1994.

The Home Ownership and Equity Protection Act of 1994 (15 U.S.C. 1601 note) is amended—

(1) in section 158(a), by striking ''Consumer Advisory Council of the Board'' and inserting ''Advisory Board to the Bureau''; and

(2) by striking ''Board'' each place that term appears and inserting ''Bureau''.

SEC. 1095. AMENDMENTS TO THE OMNIBUS APPROPRIATIONS ACT, 2009.

Section 626 of the Omnibus Appropriations Act, 2009 (15 U.S.C. 1638 note) is amended—

(1) by striking subsection (a) and inserting the following:

''(a)(1) The Bureau of Consumer Financial Protection shall have authority to prescribe rules with respect to mortgage loans in accordance with section 553 of title 5, United States Code. Such rulemaking shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services. Any violation of a rule prescribed under this paragraph shall be treated as a violation of a rule prohibiting unfair, deceptive, or abusive acts or practices under the Consumer Financial Protection Act of 2010 and a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

''(2) The Bureau of Consumer Financial Protection shall enforce the rules issued under paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties, as though all applicable terms and provisions of the Consumer Financial Protection Act of 2010 were incorporated into and made part of this subsection.''; and

(2) in subsection (b)—

(A) by striking paragraph (1) and inserting the following:

''(1) Except as provided in paragraph (6), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to a rule prescribed under subsection (a) in practices that violate such rule, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States or other court of competent jurisdiction—

''(A) to enjoin that practice;

''(B) to enforce compliance with the rule;

''(C) to obtain damages, restitution, or other compensation on behalf of the residents of the State; or

''(D) to obtain penalties and relief provided under the Consumer Financial Protection Act of 2010, the Federal Trade Commission Act, and such other relief as the court deems appropriate.'';

(B) in paragraphs (2) and (3), by striking ''the primary Federal regulator'' each time the term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission, as appropriate'';

(C) in paragraph (3), by inserting ''and subject to subtitle B of the Consumer Financial Protection Act of 2010,'' after ''paragraph (2),''; and

(D) in paragraph (6), by striking ''the primary Federal regulator'' each place that term appears and inserting ''the Bureau of Consumer Financial Protection or the Commission''.

SEC. 1096. AMENDMENTS TO THE REAL ESTATE SETTLEMENT PROCEDURES ACT.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (7), by striking ''and'' at the end;

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

(C) by adding at the end the following:

''(9) the term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) in section 4 (12 U.S.C. 2603)—

(A) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Truth in Lending Act, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(C) by striking ''form'' each place that term appears and inserting ''forms'';

(3) in section 5 (12 U.S.C. 2604)—

(A) by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(B) in subsection (a), by striking the first sentence and inserting the following: ''The Bureau shall prepare and distribute booklets jointly addressing compliance with the requirements of the Truth in Lending Act and the provisions of this title, in order to help

persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services.'';

(4) in section 6(j)(3) (12 U.S.C. 2605(j)(3))—

(A) by striking ''Secretary'' and inserting ''Bureau''; and

(B) by striking '', by regulations that shall take effect not later than April 20, 1991,'';

(5) in section 7(b) (12 U.S.C. 2606(b)) by striking ''Secretary'' and inserting ''Bureau'';

(6) in section 8(d) (12 U.S.C. 2607(d))—

(A) in the subsection heading, by inserting ''BUREAU AND'' before ''SECRETARY''; and

(B) by striking paragraph (4), and inserting the following:

''(4) The Bureau, the Secretary, or the attorney general or the insurance commissioner of any State may bring an action to enjoin violations of this section. Except, to the extent that a person is subject to the jurisdiction of the Bureau, the Secretary, or the attorney general or the insurance commissioner of any State, the Bureau shall have primary authority to enforce or administer this section, subject to subtitle B of the Consumer Financial Protection Act of 2010.''.

(7) in section 10(c) (12 U.S.C. 2609(c) and (d)), by striking ''Secretary'' and inserting ''Bureau'';

(8) in section 16 (12 U.S.C. 2614), by inserting ''the Bureau,'' before ''the Secretary'';

(9) in section 18 (12 U.S.C. 2616), by striking ''Secretary'' each place that term appears and inserting ''Bureau''; and

(10) in section 19 (12 U.S.C. 2617)—

(A) in the section heading by striking ''**SECRETARY**'' and inserting ''**BUREAU**'';

(B) by striking ''Secretary'' each place that term appears and inserting ''Bureau'';

(C) in subsection (b), by inserting ''the Bureau'' before ''the Secretary''; and

(D) in subsection (c), by inserting ''or the Bureau'' after ''the Secretary'' each time that term appears.

SEC. 1097. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978.

The Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) is amended—

(1) in section 1101—

(A) in paragraph (6)—

(i) in subparagraph (A), by inserting ''and'' after the semicolon;

(ii) in subparagraph (B), by striking ''and'' at the end; and

(iii) by striking subparagraph (C); and

(B) in paragraph (7), by striking subparagraph (E), and inserting the following:

''(E) the Bureau of Consumer Financial Protection;'';

(2) in section 1112(e) (12 U.S.C. 3412(e)), by striking ''and the Commodity Futures Trading Commission is permitted'' and inserting ''the Commodity Futures Trading Commission, and the Bureau of Consumer Financial Protection is permitted''; and

(3) in section 1113 (12 U.S.C. 3413), by adding at the end the following new subsection:

''(r) DISCLOSURE TO THE BUREAU OF CONSUMER FINANCIAL PROTECTION.—Nothing in this title shall apply to the examination by or disclosure to the Bureau of Consumer Financial Protection of financial records or information in the exercise of its authority with respect to a financial institution.''.

SEC. 1098. AMENDMENTS TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

The S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) is amended—

(1) by striking ''a Federal banking agency'' each place that term appears, other than in paragraphs (7) and (11) of section 1503 and section 1507(a)(1), and inserting ''the Bureau'';

(2) by striking ''Federal banking agencies'' each place that term appears and inserting ''Bureau''; and

(3) by striking ''Secretary'' each place that term appears and inserting ''Director'';

(4) in section 1503 (12 U.S.C. 5102)—

(A) by redesignating paragraphs (2) through (12) as (3) through (13), respectively;

(B) by striking paragraph (1) and inserting the following:

''(1) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.

''(2) FEDERAL BANKING AGENCY.—The term 'Federal banking agency' means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.''; and

(C) by striking paragraph (10), as so designated by this section, and inserting the following:

''(10) DIRECTOR.—The term 'Director' means the Director of the Bureau of Consumer Financial Protection.''; and

(5) in section 1507 (12 U.S.C. 5106)—

(A) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

''(1) IN GENERAL.—The Bureau shall develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employees of an institution regulated by the Farm Credit Administration, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of the Consumer Financial Protection Act of 2010.''; and

(ii) in paragraph (2)—

(I) by striking ''appropriate Federal banking agency and the Farm Credit Administration'' and inserting ''Bureau''; and

(II) by striking ''employees's identity'' and inserting ''identity of the employee''; and

(B) in subsection (b), by striking ''through the Financial Institutions Examination Council, and the Farm Credit Administration'', and inserting ''and the Bureau of Consumer Financial Protection'';

(6) in section 1508 (12 U.S.C. 5107)—

(A) by striking the section heading and inserting the following: ''**SEC. 1508. BUREAU OF CONSUMER FINANCIAL PROTECTION BACKUP AUTHORITY TO ESTABLISH LOAN ORIGINATOR LICENSING SYSTEM.**''; and

(B) by adding at the end the following:

''(f) REGULATION AUTHORITY.—

''(1) IN GENERAL.—The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

''(2) CONSIDERATIONS.—In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.'';

(7) by striking section 1510 (12 U.S.C. 5109) and inserting the following:

''SEC. 1510. FEES.

''The Bureau, the Farm Credit Administration, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.'';

(8) by striking section 1513 (12 U.S.C. 5112) and inserting the following:

''SEC. 1513. LIABILITY PROVISIONS.

''The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 1509, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.''; and

(9) in section 1514 (12 U.S.C. 5113) in the section heading, by striking ''**UNDER HUD BACKUP LICENSING SYSTEM**'' and inserting ''**BY THE BUREAU**''.

SEC. 1099. AMENDMENTS TO THE TRUTH IN LENDING ACT.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended—

(1) in section 103 (5 U.S.C. 1602)—

(A) by redesignating subsections (b) through (bb) as subsections (c) through (cc), respectively; and

(B) by inserting after subsection (a) the following:

''(b) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.'';

(2) by striking ''Board'' each place that term appears, other than in section 140(d) and section 108(a), as amended by this section, and inserting ''Bureau'';

(3) by striking ''Federal Trade Commission'' each place that term appears, other than in section 108(c) and section 129(m), as amended by this Act, and other than in the context of a reference to the Federal Trade Commission Act, and inserting ''Bureau'';

(4) in section 105(a) (15 U.S.C. 1604(a)), in the second sentence—

(A) by striking ''Except in the case of a mortgage referred to in section 103(aa), these regulations may contain such'' and inserting ''Except with respect to the provisions of section 129 that apply to a mortgage referred to in section 103(aa), such regulations may contain such additional requirements,''; and

(B) by inserting ''all or'' after ''exceptions for'';

(5) in section 105(b) (15 U.S.C. 1604(b)), by striking the first sentence and inserting the following: ''The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this title and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures.'';

(6) in section 105(f)(1) (15 U.S.C. 1604(f)(1)), by inserting ''all or'' after ''from all or part of this title'';

(7) in section 108 (15 U.S.C. 1607)—

(A) by striking subsection (a) and inserting the following:

''(a) ENFORCING AGENCIES.—Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

''(1) section 8 of the Federal Deposit Insurance Act, in the case of—

''(A) any national bank, and Federal branch or Federal agency of a foreign bank, by the Office of the Comptroller of the Currency;

''(B) any member bank of the Federal Reserve System (other than a national bank), any branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank), any commercial lending company owned or controlled by a foreign bank, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the Board; and

''(C) any bank insured by the Federal Deposit Insurance Corporation (other than a member of the Federal Reserve System) and an insured State branch of a foreign bank, by the Board of Directors of the Federal Deposit Insurance Corporation;

''(2) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau;

''(3) the Federal Credit Union Act, by the Director of the National Credit Union Administration, with respect to any Federal credit union;

''(4) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

''(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture, with respect to any activities subject to that Act; and

''(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.''; and

(B) by striking subsection (c) and inserting the following:

''(c) OVERALL ENFORCEMENT AUTHORITY OF THE FEDERAL TRADE COMMISSION.—Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.'';

(8) in section 129 (15 U.S.C. 1639), by striking subsection (m) and inserting the following:

''(m) CIVIL PENALTIES IN FEDERAL TRADE COMMISSION ENFORCEMENT ACTIONS.—For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (l)(2) shall be treated as a violation of a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.''; and

(9) in chapter 5 (15 U.S.C. 1667 et seq.)—

(A) by striking ''the Board'' each place that term appears and inserting ''the Bureau''; and

(B) by striking ''The Board'' each place that term appears and inserting ''The Bureau''.

SEC. 1100. AMENDMENTS TO THE TRUTH IN SAVINGS ACT.

The Truth in Savings Act (12 U.S.C. 4301 et seq.) is amended—

(1) by striking ''Board'' each place that term appears and inserting ''Bureau'';

(2) in section 270(a) (12 U.S.C. 4309)—

(A) by striking ''Compliance'' and inserting ''Except as otherwise provided in subtitle B of the Consumer Financial Protection Act of 2010, compliance'';

(B) in paragraph (1)—

(i) in subparagraph (B), by striking ''and'' at the end; and

(ii) by striking subparagraph (C);

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

(D) by adding at the end the following:

''(3) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau.'';

(3) in section 272(b) (12 U.S.C. 4311(b)), by striking ''regulation prescribed by the Board'' each place that term appears and inserting ''regulation prescribed by the Bureau''; and

(4) in section 274 (12 U.S.C. 4313), by striking paragraph (4) and inserting the following:

''(4) BUREAU.—The term 'Bureau' means the Bureau of Consumer Financial Protection.''.

SEC. 1101. AMENDMENTS TO THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT.

(a) AMENDMENTS TO SECTION 3.—Section 3 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6102) is amended by striking subsections (b) and (c) and inserting the following:

''(b) RULEMAKING AUTHORITY.—The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5, United States Code. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

''(c) VIOLATIONS.—Any violation of any rule prescribed under subsection (a)—

''(1) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act regarding unfair or deceptive acts or practices; and

''(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act regarding unfair, deceptive, or abusive acts or practices.''.

(b) AMENDMENTS TO SECTION 4.—Section 4(d) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6103(d)) is amended by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(c) AMENDMENTS TO SECTION 5.—Section 5(c) of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6104(c)) is amended by inserting after ''Commission'' each place that term appears the following: ''or the Bureau of Consumer Financial Protection''.

(d) AMENDMENT TO SECTION 6.—Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6105) is amended by adding at the end the following:

''(d) ENFORCEMENT BY BUREAU OF CONSUMER FINANCIAL PROTECTION.—Except as otherwise provided in sections 3(d), 3(e), 4, and 5, and subject to subtitle B of the Consumer Financial Protection Act of 2010, this Act shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010.''.

SEC. 1102. AMENDMENTS TO THE PAPERWORK REDUCTION ACT.

(a) DESIGNATION AS AN INDEPENDENT AGENCY.—Section 2(5) of the Paperwork Reduction Act (44 U.S.C. 3502(5)) is amended by inserting ''the Bureau of Consumer Financial Protection, the Office of Financial Research,'' after ''the Securities and Exchange Commission,''.

(b) COMPARABLE TREATMENT.—Section 3513 of title 44, United States Code, is amended by adding at the end the following:

''(c) COMPARABLE TREATMENT.—Notwithstanding any other provision of law, the Director shall treat or review a rule or order prescribed or proposed by the Director of the Bureau of Consumer Financial Protection on the same terms and conditions as apply to any rule or order prescribed or proposed by the Board of Governors of the Federal Reserve System.''.

SEC. 1103. ADJUSTMENTS FOR INFLATION IN THE TRUTH IN LENDING ACT.

(a) CAPS.—

(1) CREDIT TRANSACTIONS.—Section 104(3) of the Truth in Lending Act (15 U.S.C. 1603(3)) is amended by striking ''$25,000'' and inserting ''$50,000''.

(2) CONSUMER LEASES.—Section 181(1) of the Truth in Lending Act (15 U.S.C. 1667(1)) is amended by striking ''$25,000'' and inserting ''$50,000''.

(b) ADJUSTMENTS FOR INFLATION.—On and after December 31, 2011, the Bureau may adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act (as amended by this section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of $100, or $1,000, as applicable.

SEC. 1104. EFFECTIVE DATE.

Except as otherwise provided in this subtitle and the amendments made by this subtitle, this subtitle and the amendments made by this subtitle, other than sections 1081 and 1082, shall become effective on the designated transfer date.

SA 3832. Mr. SESSIONS (for himself, Mr. BUNNING, Mr. DEMINT, Mr. ENSIGN, and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike title II and insert the following:

TITLE II—BANKRUPTCY INTEGRITY AND ACCOUNTABILITY ACT

SEC. 201. SHORT TITLE.

This title may be cited as the ''Bankruptcy Integrity and Accountability Act of 2010''.

SEC. 202. AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.

Title 28, 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 domicile, 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 domicile, 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 domicile, principal place of business or principal assets in the United States.'', and

(3) by amending the table of sections for chapter 87, by inserting after the item relating to section 1408 the following:

''1409A. Venue of cases involving non-bank financial institutions.''.

SEC. 203. 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 'Financial Stability Oversight Council' means the entity established in section 111 of the Restoring American Financial Stability Act of 2010''; and

(4) by inserting after paragraph (40) the following:

''(40A) The term 'non-bank financial institution' means an institution the business of which is primarily engaged 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 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.''; and

(2) in subsection (d), by striking ''or commodity broker'' and inserting '', commodity broker, or a non-bank financial institution''.

(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. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).''.

(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 Financial Stability Oversight Council 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 Financial Stability Oversight Council, 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 Financial Stability Oversight Council, 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 Financial Stability Oversight Council 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 Bankruptcy Integrity and Accountability Act of 2010 or the amendments made by such Act. Nor shall any Federal funds be made available through the Federal Reserve System, including through the authority of the third undesignated paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).

''§ 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 Financial Stability Oversight Council, 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 Financial Stability Oversight Council, 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 Financial Stability Oversight

Council, 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 Financial Stability Oversight Council—

''(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 Financial Stability Oversight Council 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 Financial Stability Oversight Council 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 Financial Stability Oversight Council. 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.

''(e) The provisions of this section shall apply only with respect to contracts and agreements covered by this section entered into on or after the date of enactment of this chapter.

"§ 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''.

SA 3833. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. __. SHAREHOLDER REGISTRATION THRESHOLD.

(a) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) SECTION 12.—Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. 781(g)) is amended—

(A) in paragraph (1)—

(i) by striking subparagraphs (A) and (B) and inserting the following:

''(A) in the case of an issuer that is a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 2000 persons or more; and

''(B) in the case of an issuer that is not a bank or bank holding company, 500 persons or more,''; and

(ii) by striking ''commerce shall'' and inserting ''commerce shall, not later than 120 days after the last day of its first fiscal year ended after the effective date of this subsection, on which the issuer has total assets exceeding $10,000,000 and a class of equity security (other than an exempted security) held of record by''; and

(B) in paragraph (4), by striking ''three hundred'' and inserting ''300 persons, or, in the case of a bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200''.

(2) SECTION 15.—Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)) is amended, in the third sentence, by striking ''three hundred'' and inserting ''300 persons, or, in the case of bank, as such term is defined in section 3(a)(6) of this title, or a bank holding company, as such term is defined in section (2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), 1200''.

(b) STUDY OF REGISTRATION THRESHOLDS.—

(1) STUDY.—

(A) ANALYSIS REQUIRED.—The Chief Economist and Director of the Division of Corporation Finance of the Commission shall jointly conduct a study, including a cost-benefit analysis, of shareholder registration thresholds.

(B) COSTS AND BENEFITS.—The cost-benefit analysis under subparagraph (A) shall take into account—

(i) the incremental benefits to investors of the increased disclosure that results from registration;

(ii) the incremental costs to issuers associated with registration and reporting requirements; and

(iii) the incremental administrative costs to the Commission associated with different thresholds.

(C) THRESHOLDS.—The cost-benefit analysis under subparagraph (A) shall evaluate whether it is advisable to—

(i) increase the asset threshold;

(ii) index the asset threshold to a measure of inflation;

(iii) increase the shareholder threshold;

(iv) change the shareholder threshold to be based on the number of beneficial owners; and

(v) create new thresholds based on other criteria.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Chief Economist and the Director of the Division of Corporation Finance of the Commission shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that includes—

(A) the findings of the study required under paragraph (1); and

(B) recommendations for statutory changes to improve the shareholder registration thresholds.

(c) RULEMAKING.—Not later than one year after the date of enactment of this Act, the Commission shall issue final regulations to implement this section and the amendments made by this section.

SA 3834. Mr. CORKER (for himself, Mr. GREGG, Mr. ISAKSON, and Mr. LEMIEUX) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1045, strike line 12 and all that follows through ''**SEC. 942.**'' on page 1052, line 3, and insert the following:

(b) STUDY ON RISK RETENTION.—

(1) STUDY.—

(A) IN GENERAL.—The Board of Governors, in coordination and consultation with the Comptroller of the Currency, the Corporation, the Federal Housing Finance Agency, and the Commission, shall conduct a study of the asset-backed securitization process.

(B) ISSUES TO BE STUDIED.—In conducting the study under subparagraph (A), the Board of Governors shall evaluate—

(i) the separate and combined impact of—

(I) requiring loan originators or securitizers to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party; including—

(aa) whether existing risk retention requirements such as contractual representations and warranties, and statutory and regulatory underwriting and consumer protection requirements are sufficient to ensure the long-term accountability of originators for loans they originate; and

(bb) methodologies for establishing additional statutory credit risk retention requirements;

(II) the Financial Accounting Statements 166 and 167 issued by the Financial Accounting Standards Board, as well as any other statements issued before or after the date of enactment of this section the Federal banking agencies determine to be relevant;

(ii) the impact of the factors described under subsection (i) of this section on—

(I) different classes of assets, such as residential mortgages, commercial mortgages, commercial loans, auto loans, and other classes of assets;

(II) loan originators;

(III) securitizers;

(IV) access of consumers and businesses to credit on reasonable terms.

(2) REPORT.—Not later than 18 months after the date of enactment of this section, the Board of Governors shall submit to Congress a report on the study conducted under paragraph (1). Such report shall include statutory and regulatory recommendations for eliminating any negative impacts on the continued viability of the asset-backed securitization markets and on the availability of credit for new lending identified by the study conducted under paragraph (1).

SEC. 942. RESIDENTIAL MORTGAGE UNDERWRITING STANDARDS.

(a) STANDARDS ESTABLISHED.—Notwithstanding any other provision of this Act or any other provision of Federal, State, or local law, the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, shall jointly establish specific minimum standards for mortgage underwriting, including—

(1) a requirement that the mortgagee verify and document the income and assets relied upon to qualify the mortgagor on the residential mortgage, including the previous employment and credit history of the mortgagor;

(2) a down payment requirement that—

(A) is equal to not less than 5 percent of the purchase price of the property securing the residential mortgage; and

(B) in the case of a first lien residential mortgage loan with an initial loan to value ratio that is more than 80 percent and not more than 95 percent, includes a requirement for credit enhancements, as defined by the Federal banking agencies, until the loan to value ratio of the residential mortgage loan amortizes to a value that is less than 80 percent of the purchase price;

(3) a method for determining the ability of the mortgagor to repay the residential mortgage that is based on factors including—

(A) all terms of the residential mortgage, including principal payments that fully amortize the balance of the residential mortgage over the term of the residential mortgage; and

(B) the debt to income ratio of the mortgagor; and

(4) any other specific standards the Federal banking agencies jointly determine are appropriate to ensure prudent underwriting of residential mortgages.

(b) UPDATES TO STANDARDS.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development—

(1) shall review the standards established under this section not less frequently than every 5 years; and

(2) based on the review under paragraph (1), may revise the standards established under this section, as the Federal banking agencies, in consultation with the Federal Housing Finance Agency and the Department of Housing and Urban Development, determine to be necessary.

(c) COMPLIANCE.—It shall be a violation of Federal law—

(1) for any mortgage loan originator to fail to comply with the minimum standards for mortgage underwriting established under subsection (a) in originating a residential mortgage loan;

(2) for any company to maintain an extension of credit on a revolving basis to any person to fund a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan funded by such credit was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a); or

(3) for any company to purchase, fund by assignment, or guarantee a residential mortgage loan, unless the company reasonably determines that the residential mortgage loan was subject to underwriting standards no less stringent than the minimum standards for mortgage underwriting established under subsection (a).

(d) IMPLEMENTATION.—

(1) REGULATIONS REQUIRED.—The Federal banking agencies, in consultation with the Federal Housing Finance Agency, shall issue regulations to implement subsections (a) and (c), which shall take effect not later than 270 days after the date of enactment of this Act.

(2) REPORT REQUIRED.—If the Federal banking agencies have not issued final regulations under subsections (a) and (c) before the date that is 270 days after the date of enactment of this Act, the Federal banking agencies shall jointly submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that—

(A) explains why final regulations have not been issued under subsections (a) and (c); and

(B) provides a timeline for the issuance of final regulations under subsections (a) and (c).

(e) ENFORCEMENT.—Compliance with the rules issued under this section shall be enforced by—

(1) the primary financial regulatory agency of an entity, with respect to an entity subject to the jurisdiction of a primary financial regulatory agency, in accordance with the statutes governing the jurisdiction of the primary financial regulatory agency over the entity and as if the action of the primary financial regulatory agency were taken under such statutes; and

(2) the Bureau, with respect to a company that is not subject to the jurisdiction of a primary financial regulatory agency.

(f) RULE OF CONSTRUCTION.—Nothing in this section may be construed to permit the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation to make or guarantee a residential mortgage loan that does not meet the minimum underwriting standards established under this section.

(g) DEFINITIONS.—In this section, the following definitions shall apply:

(1) COMPANY.—The term ''company''—

(A) has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)); and

(B) includes a sole proprietorship.

(2) MORTGAGE LOAN ORIGINATOR.—The term ''mortgage loan originator'' means any company that takes residential mortgage loan applications and offers or negotiates terms of residential mortgage loans.

(3) RESIDENTIAL MORTGAGE LOAN.—The term ''residential mortgage loan''—

(A) means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) does not include a mortgage loan for which mortgage insurance is provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration.

(4) EXTENSION OF CREDIT; DWELLING.—The terms ''extension of credit'' and ''dwelling'' shall have the same meaning as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

SEC. 943.

SA 3835. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1290, between lines 4 and 5, insert the following:

(s) NO AUTHORITY OVER UNDERWRITING STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.—

(1) RULE OF CONSTRUCTION.—Nothing in this title may be construed as conferring authority on the Bureau to exercise any rulemaking or other authority for matters pertaining to underwriting standards with respect to residential mortgage loans, except as otherwise authorized under section 1024.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term ''residential mortgage loan'' means any extension of credit primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent security interest in a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling; and

(B) the terms ''credit'' and ''dwelling'' have the same meanings as in section 103 of the Truth in Lending Act (15 U.S.C. 1602).

SA 3836. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 61, after line 24, add the following:

SEC. 122. COUNCIL REVIEW OF MEMBER AGENCY RULES.

(a) IN GENERAL.—The Council shall conduct a review of each rule or regulation that a member agency intends to propose relating to capital, liquidity, or leverage requirements for, or restrictions on the activities of, an entity regulated by the member agency. The Council shall consider international regulatory rules in conducting a review under this subsection.

(b) PROCESS.—

(1) IN GENERAL.—Each member agency shall submit to the Council for a binding decision an advanced notice of proposed rulemaking and any other proposed or final rule or regulation that proposes changes to capital, liquidity, or leverage requirements or activity restrictions for a financial company that is subject to regulation by the member agency.

(2) STANDARD FOR REVIEW.—In making a determination under this subsection, the members of the Council shall consider the safety and soundness of financial institutions and the stability of the financial system of the United States.

(c) TIMING.—Not later than 60 days after the date on which the Council receives a notice under subsection (b), the Council shall make a determination of whether to approve the issuance of the proposed rule or regulation that is the subject of the notice.

(d) APPROVAL REQUIRED.—No rule or regulation described in subsection (b) may become effective or enforceable, unless approved by the Council under this section.

(e) PUBLIC NOTICE.—The Council shall make public any notice of proposed rulemaking or other notice of a rule or regulation submitted by a member agency under this section.

SA 3837. Mr. CORKER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1236, line 4 strike ''(3)'' and insert the following:

''(3) FFIEC REVIEW OF BUREAU REGULATIONS.—The Federal Financial Institutions Examination Council shall review each regulation prescribed by the Bureau prior to its effective date, and unless approved by the Federal Financial Institutions Examination Council, by majority vote, such regulation shall not become effective.

''(4)''.

SA 3838. Mr. BROWN of Massachusetts (for himself, Mrs. SHAHEEN, and Mr. GREGG) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 295, between lines 19 and 20, insert the following:

(s) TREATMENT OF CERTAIN NONBANK FINANCIAL COMPANIES NOT SUBJECT TO ORDERLY LIQUIDATION.—

(1) IN GENERAL.—Subsections (n) and (o) shall not apply to any nonbank financial company that is subject to liquidation or rehabilitation under State law, unless such company—

(A) is determined to be a nonbank financial company supervised by the Board of Governors pursuant to section 113; or

(B) is determined by the Corporation to have benefitted financially from the orderly liquidation of a covered financial company and the use of the Fund under this title by receiving payments or credit pursuant to subsection (b)(4), (d)(4), or (h)(5)(E).

(2) EXCLUSION OF ASSETS.—Any assets of a nonbank financial company described in paragraph (1) shall be excluded for purposes of calculating a financial company's total consolidated assets under subsection (o).

SA 3839. Mr. MCCAIN (for himself, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, and Mr. CORKER) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the bill, add the following:

TITLE XIII—ENHANCED REGULATION OF GOVERNMENT-SPONSORED ENTERPRISES

Subtitle A—GSE Bailout Elimination and Taxpayer Protection

SECTION 1311. SHORT TITLE.

This subtitle may be cited as the ''GSE Bailout Elimination and Taxpayer Protection Act''.

SEC. 1312. DEFINITIONS.

For purposes of this subtitle, 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. 1313. 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 the enterprise that is in effect pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617); 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 beginning upon the date of the enactment of this Act; 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, and upon making such determination notifies the Congress in writing of such determination, the 30-month period beginning upon the date of the enactment of this Act.

(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. 1314. LIMITATION OF ENTERPRISE AUTHORITY UPON EMERGENCE FROM CONSERVATORSHIP.

(a) REVISED AUTHORITY.—Upon the expiration of the period referred to in section 1113(b), if the Director makes the determination under section 1113(a)(1), the following provisions shall take effect:

(1) REPEAL OF HOUSING GOALS.—

(A) REPEAL.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking sections 1331 through 1336 (12 U.S.C. 4561–6).

(B) CONFORMING AMENDMENTS.—Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended—

(i) in section 1303(28) (12 U.S.C. 4502(28)), by striking ''and, for the purposes'' and all that follows through ''designated disaster areas'';

(ii) in section 1324(b)(1)(A) (12 U.S.C. 4544(b)(1)(A))—

(I) by striking clauses (i), (ii), and (iv);

(II) in clause (iii), by inserting ''and'' after the semicolon at the end; and

(III) by redesignating clauses (iii) and (v) as clauses (i) and (ii), respectively;

(iii) in section 1338(c)(10) (12 U.S.C. 4568(c)(10)), by striking subparagraph (E);

(iv) in section 1339(h) (12 U.S.C. 4569), by striking paragraph (7);

(v) in section 1341 (12 U.S.C. 4581)—

(I) in subsection (a)—

(aa) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(cc) by striking paragraphs (3) and (4); and

(II) in subsection (b)(2)—

(aa) in subparagraph (A), by inserting ''or'' after the semicolon at the end;

(bb) by striking subparagraphs (B) and (C); and

(cc) by redesignating subparagraph (D) as subparagraph (B);

(vi) in section 1345(a) (12 U.S.C. 4585(a))—

(I) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(III) by striking paragraphs (3) and (4); and

(vii) in section 1371(a)(2) (12 U.S.C. 4631(a)(2))—

(I) by striking ''with any housing goal established under subpart B of part 2 of subtitle A of this title,''; and

(II) by striking ''section 1336 or''.

(2) 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 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act or thereafter, 95 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of the previous year, provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets;

''(2) upon the expiration of the 1-year period that begins on the date described in paragraph (1) or thereafter, 75 percent of the aggregate amount of mortgage assets that the regulated entity owned in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets;

''(3) upon the expiration of the 2-year period that begins on the date described in paragraph (1) or thereafter, 75 percent of the aggregate amount of mortgage assets that the regulated entity owned upon the expiration of the 1-year period that begins on the date described in paragraph (1), provided, that in no event shall the regulated entity be required under this paragraph to own less than $250,000,000,000 in mortgage assets; and

''(4) upon the expiration of the 3-year period that begins on the date described in paragraph (1), $250,000,000,000.

''(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).''.

(3) 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 such 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 a enterprise to maintain capital at or above its minimum level as established pursuant to subsection (g) 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 (g) 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.''.

(4) REPEAL OF INCREASES TO CONFORMING LOAN LIMITS.—

(A) REPEAL OF TEMPORARY INCREASES.—

(i) CONTINUING APPROPRIATIONS RESOLUTION, 2010.—Section 167 of the Continuing Appropriations Resolution, 2010 (as added by section 104 of division B of Public Law 111–88; 123 Stat. 2973) 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.

(iii) ECONOMIC STIMULUS ACT OF 2008.—Section 201 of the Economic Stimulus Act of 2008 (Public Law 110–185; 122 Stat. 619) 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 1113(b) 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 asset 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.''.

(5) REQUIREMENT OF MINIMUM DOWN PAYMENT FOR MORTGAGES PURCHASED.—

(A) FANNIE MAE.—Subsection (b) of section 302 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)) is amended by adding at the end the following new paragraph:

''(7) Notwithstanding any other provision of this Act, the corporation may not newly purchase any mortgage asset, unless the mortgagor has paid, in cash or its equivalent on account of the property securing repayment such mortgage, in accordance with regulations issued by the Director of the Federal Housing Finance Agency, not less than—

''(A) for any mortgage purchased during the 12-month period beginning upon the expiration of the period referred to in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, 5 percent of the appraised value of the property;

''(B) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (A) of this paragraph, 7.5 percent of the appraised value of the property; and

''(C) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (B) of this paragraph, 10 percent of the appraised value of the property.''.

(B) FREDDIE MAC.—Subsection (a) of section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)) is amended by adding at the end the following new paragraph:

''(6) Notwithstanding any other provision of this Act, the Corporation may not newly purchase any mortgage asset, unless the mortgagor has paid, in cash or its equivalent on account of the property securing repayment such mortgage, in accordance with regulations issued by the Director of the Federal Housing Finance Agency, not less than—

''(A) for any mortgage purchased during the 12-month period beginning upon the expiration of the period referred to in section 1113(b) of the GSE Bailout Elimination and Taxpayer Protection Act, 5 percent of the appraised value of the property;

''(B) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (A) of this paragraph, 7.5 percent of the appraised value of the property; and

''(C) for any mortgage purchased during the 12-month period beginning upon the expiration of the 12-month period referred to in subparagraph (B) of this paragraph, 10 percent of the appraised value of the property.''.

(6) MINIMUM PRUDENT UNDERWRITING STANDARDS.—The Federal Housing Finance Agency shall, not later than 6 months after the date of enactment of this Act, issue regulations specifying minimum prudent underwriting standards for residential mortgage loans eligible for purchase by an enterprise, which regulations shall include minimum requirements for—

(A) verification and documentation of income and assets relied upon to qualify the obligor on the loan;

(B) determination of the ability of the obligor to repay, based on all terms of the loan, including principal payments that fully amortize the balance over the term of the loan; and

(C) any other standards that the Federal Housing Finance Agency determines appropriate to ensure prudent underwriting and which effect the safety and soundness of the regulated entities.

(7) 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''.

(8) 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).

(9) 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).

(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 enactment of this Act, the Comptroller General shall submit to the Congress a report setting forth the determinations and conclusions of such study.

SEC. 1315. REQUIRED WIND DOWN OF OPERATIONS AND DISSOLUTION OF ENTERPRISE.

(a) APPLICABILITY.—This section shall apply to an enterprise upon the expiration of the 3-year period referred to in section 1113(b).

(b) REPEAL OF CHARTER.—Upon the applicability of this section to an enterprise, the charter for the enterprise is repealed and the enterprise shall have no authority to conduct new business under such charter, 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.

(c) 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 subtitle and the ongoing obligations of the enterprise.

(d) DIVISION OF ASSETS AND LIABILITIES; AUTHORITY TO ESTABLISH HOLDING CORPORATION AND DISSOLUTION TRUST FUND.—The action and procedures required under subsection (c)—

(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 (a); 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.

Subtitle B—Inspector General for Regulated Entities in Conservatorship

SEC. 1321. SPECIAL INSPECTOR GENERAL FOR THE CONSERVATORSHIP OF REGULATED ENTITIES.

(a) OFFICE OF INSPECTOR GENERAL.—There is established in the General Accountability Office the Office of the Special Inspector General for the Conservatorship of Regulated Entities.

(b) APPOINTMENT OF INSPECTOR GENERAL.—

(1) LEADERSHIP.—The head of the Office established under subsection (a) shall be the Special Inspector General for the Conservatorship of Regulated Entities (in this section referred to as the ''Special Inspector General''), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) APPOINTMENT.—The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) TIMING.—The nomination of an individual as Special Inspector General shall be made as soon as is practicable following the date of enactment of this Act, but not later than 30 days after that date of enactment.

(4) REMOVABLE FOR CAUSE.—The Special Inspector General shall be removable from office, in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) STATUS.—For purposes of section 7324 of title 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) COMPENSATION.—The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) DUTIES.—

(1) IN GENERAL.—It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by regulated entities, so long as the entities remain in conservatorship under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617) (in this section referred to as ''regulated entities''), including by collecting and summarizing—

(A) a description of the categories of mortgage assets purchased or otherwise procured by regulated entities;

(B) an explanation of the reasons why the Director of the Federal Housing Finance Agency (in this section referred to as the ''Director'') deemed it necessary to purchase each such mortgage asset;

(C) a listing of each institution from which such mortgage assets were purchased;

(D) a current estimate of the total amount of mortgage assets purchased since the date of appointment of the Federal Housing Finance Agency (in this section referred to as the ''Agency'') as conservator and the profit and loss, projected or realized, of each such mortgage asset;

(E) a description of the categories of mortgage loans modified by regulated entities;

(F) an explanation of the reasons why the Director deemed it necessary to modify each such mortgage loan;

(G) an explanation of the risk analysis procedures in place within regulated entities and the Council in respect to the modification process, as well as the loans accepted into the modification process;

(H) an explanation of the effect of continuing the affordable housing goals of the regulated entities on the financial standing of the regulated entities;

(I) the impact on any funding requested and accepted as a part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated September 26, 2008, amended May 6, 2009, amended December 24, 2009, and amended further at any point following the date of enactment of this Act;

(J) an assessment of whether the budgetary treatment of the assets and liabilities of the entities is correct, as it relates to the budget proposed by the President, as required under section 1105(a) of title 31, United States Code;

(K) an explanation of troubled assets owned by the regulated entities and acquired prior to the conservatorship; and

(L) a description of any changes to the structure of the regulated entities made by the Director and an explanation of how the changes will better enable the regulated entities to be successful during and post conservatorship.

(2) ADMINISTRATIVE AUTHORITY.—The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) OTHER DUTIES.—In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall have the duties and responsibilities of inspectors general under the Inspector General Act of 1978, including sections 4(b)(1) and 6 of that Act.

(d) PERSONNEL, FACILITIES, AND OTHER RESOURCES.—

(1) AUTHORITY FOR OFFICERS AND EMPLOYEES.—The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(2) SERVICES.—The Special Inspector General may obtain services, as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–15 of the General Schedule by section 5332 of such title.

(3) CONTRACTS.—The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4) AGENCY COOPERATION.—

(A) REQUESTS.—Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, in so far as is practicable and not in contravention of any other provision of law, furnish such information or assistance to the Special Inspector General, or an authorized designee thereof.

(B) REPORTS OF UNREASONABLE DENIALS.—Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress, without delay.

(e) REPORTS.—

(1) QUARTERLY REPORTS TO CONGRESS.—Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report. Each report shall include, for the period covered by such report, a detailed statement of all information collected under subsection (c)(1).

(2) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive Order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(f) FUNDING.—Of the amounts made available to the Secretary, under section 118 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5228), $5,000,000 shall be available to the Special Inspector General to carry out this section, which amount shall remain available until expended.

(g) TERMINATION.—

(1) IN GENERAL.—The Office of the Special Inspector General shall terminate 90 days after the date of the emergence of all regulated entities from conservatorship and receivership under section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617).

(2) FINAL REPORT.—The Office of the Special Inspector General shall prepare and submit a final report to Congress not later than the end of the 90-day period referred to in paragraph (1).

Subtitle C—Limiting Further Bailouts of Fannie Mae and Freddie Mac

SEC. 1331. SHORT TITLE.

This subtitle may be cited as the ''Ending Bailouts of Fannie Mae and Freddie Mac Act''.

SEC. 1332. REESTABLISHING THE MAXIMUM AGGREGATE AMOUNT PERMITTED TO BE PROVIDED BY THE TAXPAYERS TO FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(L) REESTABLISHMENT OF TAXPAYER FUNDING CAPS.—The Agency, as conservator, shall prevent a regulated entity from requesting or receiving any funds from the United States Department of the Treasury, as part of the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United State Department of the Treasury and the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association, that exceeds a maximum aggregate amount of $200,000,000,000.''.

SEC. 1333. REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity 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 entity in accordance with generally accepted accounting principles.''.

SEC. 1334. ENSURING CONGRESSIONAL REVIEW FOR AGREEMENTS INCREASING TAXPAYER RISK.

Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)), as amended by sections 1203 and 1204, is further amended by adding at the end the following new subparagraph:

''(N) AGREEMENTS.—

''(i) IN GENERAL.—The Agency, as conservator or receiver, may enter into agreements that are consistent with its appointment as conservator or receiver with the regulated entity and that expire prior to, or upon, the regulated entity's emergence from conservatorship or receivership provided—

''(I) the agreement does not expose the United States taxpayers to additional risk; and

''(II) the agreement was approved by Congress pursuant to clause (ii).

''(ii) PROCEDURE FOR CONGRESSIONAL APPROVAL.—

''(I) IN GENERAL.—Notwithstanding clause (i), the Agency may enter into, on an interim basis, an agreement, even if the agreement exposes the taxpayer to additional risk, including if such agreement exceeds the limitations established under subparagraphs (L) and (M), if such an agreement—

''(aa) is deemed necessary by the Agency, based upon the Agency's duties as conservator or receiver; and

''(bb) is approved by Congress through adoption of a concurrent resolution of approval, not more than 120 days after the later of—

''(AA) the signing of the agreement; or

''(BB) the date of enactment of the Ending Bailouts of Fannie Mae and Freddie Mac Act.

''(II) REQUIRED SUBMISSIONS FOR CONGRESSIONAL REVIEW.—During the 120-day period described under subclause (I), the Director shall submit to Congress—

''(aa) the text of the agreement;

''(bb) a certification and justification of how the agreement is consistent with the Agency's duties as conservator or receiver;

''(cc) budgetary projections demonstrating the cost to the taxpayer in a 1, 5, and 10-year window;

''(dd) independent risk analysis from the Government Accountability Office of the agreement, considering the risk to the short and long-term viability of the regulated entity and the United States taxpayer; and

''(ee) a time table for the expiration of the agreement.''.

Subtitle D—Fannie Mae and Freddie Mac in the Federal Budget

SEC. 1341. ON-BUDGET STATUS OF FANNIE MAE AND FREDDIE MAC.

(a) IN GENERAL.—Notwithstanding any other provision of law, the receipts and disbursements, including the administrative expenses, of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation 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;

(3) the Statutory Pay-As-You-Go Act of 2010; and

(4) the Balanced Budget and Emergency Deficit Control Act of 1985 (or any successor statute).

(b) EXPIRATION.—The budgetary treatment of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements under subsection (a) shall continue with respect to such entities until such entities are no longer under Federal conservatorship or receivership as authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1342. BUDGETARY TREATMENT OF FANNIE MAE AND FREDDIE MAC.

All costs to the Government of the activities of or under the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and any functional replacements or any modification of such entities shall be determined on a fair value basis.

SEC. 1343. FANNIE MAE AND FREDDIE MAC DEBT SUBJECT TO PUBLIC DEBT LIMIT.

(a) IN GENERAL.—For purposes of section 3101(b) of chapter 31 of title 31, United States Code, the face amount of obligations issued by the Federal National Mortgage Association and by the Federal Home Loan Mortgage Corporation or any functional replacements and outstanding shall be treated as issued by the United States Government under that section.

(b) TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT.—The limit on the obligation in section 3101(b) of title 31, United States Code, shall be increased by the face amount of obligations issued by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation and outstanding on April 15, 2010.

(c) EXPIRATION.—

(1) OBLIGATIONS.—The obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements shall continue to be treated as issued by the United States Government with respect to such entities until such entities no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

(2) DEBT LIMIT.—Any temporary increase in the public debt limit authorized in subsection (b) with respect to the obligations of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation shall be reversed with respect to such entities when Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements no longer have in place an agreement with the Secretary of the Treasury for the purchase of obligations and securities authorized by the Housing and Economic Recovery Act of 2008 (Public Law 110–289) or any successor statute.

SEC. 1344. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) FAIR VALUE.—The term ''fair value'' shall have the same meaning as the definition of fair value outlined in Financial Accounting Standards No. 157, or any successor thereto, issued by the Financial Accounting Standards Board.

(2) FUNCTIONAL REPLACEMENTS.—The term ''functional replacements'' means any organization, agreement, or other arrangement that would perform the public functions of Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(3) MODIFICATION.—

(A) IN GENERAL.—The term ''modification'' means any government action that alters the estimated fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements.

(B) COST.—The cost of a modification is the difference between the current estimate of the fair value of the activities of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or any functional replacements and the estimate of the fair value of such activities as modified.

SA 3840. Mr. CARDIN (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 977, line 19, strike ''The Securities'' and insert the following:

(a) IN GENERAL.—The Securities

On page 994, between lines 2 and 3, insert the following:

(b) PROTECTION FOR EMPLOYEES OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.—Section 1514A(a) of title 18, United States Code, is amended—

(1) by inserting ''or nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c),'' after ''78*o*(d)),''; and

(2) by inserting ''or nationally recognized statistical rating organization'' after ''such company''.

SA 3841. Mr. MENENDEZ submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 977, line 19, strike ''The'' and insert ''(a) **SECURITIES EXCHANGE ACT OF 1934**.—The''.

On page 994, between lines 2 and 3, insert the following:

(b) SECTION 1514A OF TITLE 18, UNITED STATES CODE.—

(1) STATUTE OF LIMITATIONS; JURY TRIAL.—Section 1514A(b)(2) of title 18, United States Code, is amended—

(A) in subparagraph (D)—

(i) by striking ''90'' and inserting ''180''; and

(ii) by striking the period at the end and inserting '', or after the date on which the employee became aware of the violation.''; and

(B) by adding at the end the following:

''(E) JURY TRIAL.—A party to an action brought under paragraph (1)(B) shall be entitled to trial by jury.''.

(2) COMPENSATORY DAMAGES.—Section 1514A(c)(2)(C) of title 18, United States Code, is amended by inserting ''compensatory damages, including'' before ''compensation''.

(3) PRIVATE SECURITIES LITIGATION WITNESSES; NONENFORCEABILITY; INFORMATION.—Section 1514A of title 18, United States Code, is amended by adding at the end the following:

''(e) PRIVATE SECURITIES LITIGATION.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, an individual in the terms and conditions of employment because of any lawful act done by the individual in providing information, or assisting in any investigation or judicial or administrative action, relating to a private securities litigation action under section 21F of the Securities Exchange Act of 1934 (15 U.S.C. 78u–4).

''(f) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

''(1) WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment, including by a predispute arbitration agreement.

''(2) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided under paragraph

(3), no predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

''(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—An arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.''.

(4) UNDISCLOSED LIABILITIES.—Section 1514A(a)(1) of title 18, United States Code, is amended to read as follows:

''(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, any provision of Federal law relating to fraud against shareholders, or any information which has not been disclosed to shareholders that relates to a potential liability of the company that, if incurred, could affect the value of shareholder investments, when the information or assistance is provided to or the investigation is conducted by—

''(A) a Federal regulatory or law enforcement agency;

''(B) any Member of Congress or any committee of Congress; or

''(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or''.

(5) TECHNICAL AND CONFORMING AMENDMENT.—Section 1514A(b)(1) of title 18, United States Code, is amended by inserting ''or (e)'' after ''subsection (a)''.

SA 3842. Mr. NELSON of Florida (for himself and Mr. BROWN of Massachusetts) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 780, strike lines 1 through 3 and insert the following:

(B) in the matter following subsection (b)—

(i) by striking ''(but not'' and all that follows through ''insider trading)''; and

(ii) by striking ''(as defined in section 206B of the Gramm-Leach-Bliley Act)'';

SA 3843. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. INCREASE IN DEPOSIT AND SHARE INSURANCE AMOUNTS.

(a) PERMANENT INCREASE IN DEPOSIT INSURANCE.—

(1) INSURANCE AMOUNT.—Section 11(a)(1)(E) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(E)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(2) BORROWING AUTHORITY.—The Board of Directors of the Corporation may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 14(a) and 15(c) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a), 1825(c)).

(b) PERMANENT INCREASE IN SHARE INSURANCE.—

(1) INSURANCE AMOUNT.—Section 207(k)(5) of the Federal Credit Union Act (12 U.S.C. 1787(k)(5)) is amended by striking ''$100,000'' and inserting ''$250,000''.

(2) BORROWING AUTHORITY.—The National Credit Union Administration Board may request from the Secretary, and the Secretary shall approve, a loan or loans in an amount or amounts necessary to carry out this subsection, without regard to the limitations on such borrowing under section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)).

(c) REPEAL.—Section 136 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5241) is repealed, effective on the date of enactment of this Act.

SA 3844. Mr. BROWNBACK (for himself, Mr. FEINGOLD, Mr. DURBIN, Mr. SPECTER, Mr. BROWN of Ohio, Mr. JOHNSON, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1565, after line 23, add the following:

TITLE XIII—CONGO CONFLICT MINERALS

SEC. 1301. SENSE OF CONGRESS ON EXPLOITATION AND TRADE OF COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

It is the sense of Congress that the exploitation and trade of columbite-tantalite, cassiterite, gold, and wolframite in the eastern Democratic Republic of Congo is helping to finance extreme levels of violence in the eastern Democratic Republic of Congo, particularly sexual and gender-based violence, and contributing to an emergency humanitarian situation therein, warranting the provisions of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302.

SEC. 1302. DISCLOSURE TO SECURITIES AND EXCHANGE COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by section 763 of this Act, is further amended by adding at the end the following new subsection:

''(o) DISCLOSURES TO COMMISSION RELATING TO COLUMBITE-TANTALITE, CASSITERITE, GOLD, AND WOLFRAMITE ORIGINATING IN DEMOCRATIC REPUBLIC OF CONGO.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate rules requiring any person described in paragraph (2)—

''(A) to disclose annually to the Commission in a report—

''(i) whether the columbite-tantalite, cassiterite, gold, or wolframite that was necessary as described in paragraph (2)(A)(ii) in the year for which such report is submitted originated or may have originated in the Democratic Republic of Congo or an adjoining country; and

''(ii) a description of the measures taken by the person, which may include an independent audit, to exercise due diligence on the source and chain of custody of such columbite-tantalite, cassiterite, gold, or wolframite, or derivatives of such minerals, in order to ensure that the activities of such person that involve such minerals or derivatives did not directly or indirectly finance or benefit armed groups in the Democratic Republic of Congo or an adjoining country; and

''(B) make the information disclosed under subparagraph (A) available to the public on the Internet website of the person.

''(2) PERSON DESCRIBED.—

''(A) IN GENERAL.—A person is described in this paragraph if—

''(i) the person is required to file reports to the Commission under subsection (a)(2); and

''(ii) columbite-tantalite, cassiterite, gold, or wolframite is necessary to the functionality or production of a product of such person.

''(B) DERIVATIVES.—For purposes of this paragraph, if a derivative of a mineral is necessary to the functionality or production of a product of a person, such mineral shall also be considered necessary to the functionality or production of a product of the person.

''(3) REVISIONS AND WAIVERS.—The Commission shall revise or temporarily waive the requirements described in paragraph (1) if the President determines that such revision or waiver is in the public interest.

''(4) TERMINATION OF DISCLOSURE REQUIREMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of paragraph (1) shall terminate on the date that is 5 years after the date of the enactment of this subsection.

''(B) EXTENSION BY SECRETARY OF STATE.—The date described in subparagraph (A) shall be extended by 1 year for each year in which the Secretary of State certifies that armed parties to the ongoing armed conflict in the Democratic Republic of Congo or adjoining countries continue to be directly involved and benefitting from commercial activity involving columbite-tantalite, cassiterite, gold, or wolframite.

''(5) ADJOINING COUNTRY DEFINED.—In this subsection, the term 'adjoining country', with respect to the Democratic Republic of Congo, means a country that shares an internationally recognized border with the Democratic Republic of Congo.''.

SEC. 1303. REPORT.

Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that includes the following:

(1) An assessment of the effectiveness of section 13(o) of the Securities Exchange Act of 1934, as added by section 1302, in promoting peace and security in the eastern Democratic Republic of Congo.

(2) A description of the problems, if any, encountered by the Securities and Exchange Commission in carrying out the provisions of such section 13(o).

(3) A description of the adverse impacts of carrying out the provisions of such section 13(o), if any, on communities in the eastern Democratic Republic of Congo.

(4) Recommendations for legislative or regulatory actions that can be taken—

(A) to improve the effectiveness of the provisions of such section 13(o) to promote peace and security in the eastern Democratic Republic of Congo;

(B) to resolve the problems described pursuant to paragraph (2), if any; and

(C) to mitigate the adverse impacts described pursuant paragraph (3), if any.

SA 3845. Mr. KAUFMAN (for himself and Mr. GRASSLEY), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 728, between lines 3 and 4, insert the following:

SEC. 760. IMPROVED TRANSPARENCY.

(a) SECURITIES.—Section 11A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k-1(a)(1)) is amended by adding at the end the following:

''(E) Promoting transparency of all markets for securities through dissemination of quotations and orders to all brokers, dealers, and investors, and minimizing conditions under which quotations and orders are hidden or selectively disseminated, will—

''(i) foster efficiency;

''(ii) enhance competition;

''(iii) increase the information available to brokers, dealers, and investors;

''(iv) facilitate the offsetting of investors' orders; and

''(v) contribute to best execution of such orders.''.

(b) COMMODITIES.—Section 3(b) of the Commodity Exchange Act (7 U.S.C. 5(b)) is amended—

(1) by striking ''and'' following ''customer assets;'';

(2) by striking the period at the end of the second sentence; and

(3) by adding at the end the following: ''; to promote transparency of all markets through dissemination of quotations and orders to all market participants and market professionals; and to minimize conditions under which quotations and orders are hidden or selectively disseminated. Furthering the purposes of this Act will foster efficiency, enhance competition, increase the information available to market participants, facilitate the offsetting of market participants' orders, and contribute to best execution of such orders.''.

SA 3846. Mrs. MCCASKILL submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title III, add the following:

SEC. 333. DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAMS.

(a) IN GENERAL.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new subsection:

''(y) DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAMS.—

''(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

''(A) DEPOSIT RESTRICTED QUALIFIED TUITION PROGRAM.—The term 'deposit restricted qualified tuition program' means a qualified tuition program in which—

''(i) the cash provided by a contributor to such a qualified tuition program may be invested only in deposits insured by the Corporation;

''(ii) the contributor may become a participant in the program by depositing funds through the program into an account at a depository institution participating in the program; and

''(iii) the program may include multiple depository institutions, subject to the requirements of section 529 of the Internal Revenue Code of 1986, as amended.

''(B) QUALIFIED TUITION PROGRAM.—The term 'qualified tuition program' has the same meaning as in section 529 of the Internal Revenue Code of 1986, as amended.

''(2) TREATMENT.—Notwithstanding any other provision of the law, the following provisions shall apply with respect to any deposit restricted qualified tuition program:

''(A) A deposit restricted qualified tuition program shall be deemed to be an 'identified banking product' (as defined in Section 206 of the Gramm-Leach-Bliley Act of 1999) for purposes of the Securities Exchange Act of 1934.

''(B) None of the following shall be treated as a security, as defined in section 2(a)(1) the Securities Act of 1933, section 3(a)(10) of the Securities Exchange Act of 1934, or section 2(a)(36) of the Investment Company Act of 1940:

''(i) The deposits of cash at an insured depository institution relating to a deposit restricted tuition program.

''(ii) Any certificate of deposit or other instrument of an insured depository institution evidencing any such deposit.

''(iii) The rights and obligations of participants in a deposit restricted qualified tuition program arising from section 529 of the Internal Revenue Code, as amended.

''(C) In no event shall a deposit restricted qualified tuition program, the State entity designated by statute to oversee such program, the administrator appointed to operate the program on behalf of the State or a participating depository institution, be deemed to be an issuer of a security or to be an investment company (as defined in section 3(a) of the Investment Company Act of 1940).''.

(b) BUDGET COMPLIANCE.—The budgetary effects of this section, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled ''Budgetary Effects of PAYGO Legislation'' for this Act, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, provided that such statement has been submitted prior to the vote on passage.

SA 3847. Mr. DODD (for Mr. LEAHY (for himself and Mr. CORNYN)) proposed an amendment to the bill S. 3111, to establish the Commission on Freedom of Information Act Processing Delays; as follows:

On page 6, line 5, strike ''The Comptroller General of the United States'' and insert ''The Archivist of the United States''.

On page 7, strike lines 1 through 3, and insert the following:

(j) TRANSPARENCY.—All meetings of the Commission shall be open to the public, except that a meeting, or any portion of it, may be closed to the public if it concerns matters or information described in chapter 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before the Commission.

SA 3848. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title I, add the following:

SEC. 122. CERTIFICATIONS BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall, not later than February 28, 2011, and annually thereafter, certify in writing to Congress that the risks to the financial stability of the United States that could arise from the material financial distress or failure of a financial company are sufficiently mitigated by actions authorized to be taken by the Council or the individual members of the Council, in order to ensure than no such financial company will be considered ''too big to fail''.

(b) INABILITY TO CERTIFY.—If the Secretary is unable to make a certification to Congress as required under subsection (a), the Secretary shall—

(1) inform Congress of the reasons for such inability; and

(2) make recommendations to Congress, to the members of the Council, and to the President that would, if implemented, enable the Secretary to provide such certification.

SA 3849. Mr. WYDEN submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle G of title X, add the following:

SEC. 1077. CREDIT CARD RATINGS.

(a) RESEARCH AND ANALYSIS.—Not later than 60 days after the date of enactment of this Act, the research unit established by the Director under section 1013(b) shall conduct a study of the credit card industry and the efficacy of establishing a rating system for credit cards, so that consumers are able to compare the terms of credit card accounts for purposes of comparing the level of safety and financial risk with respect to such accounts.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Director shall issue a report based on the study required in subsection (a), and shall determine, based on the report, whether establishing a

ratings system for credit cards would meaningfully improve the ability of consumers to compare the terms of credit card accounts.

(c) RULEMAKING.—If the Director determines, pursuant to subsection (b), that establishing a ratings system for credit cards would meaningfully improve the ability of consumers to compare the terms of credit card accounts, then not later than 12 months after the date of enactment of this Act, the Director shall issue final rules to establish and disclose to the public the ratings for credit card accounts. Such rules shall include consideration in such ratings of credit practices, including—

(1) terms of arbitration between the consumer and the credit card account holder;

(2) the imposition and amounts of fees;

(3) the ability of the consumer to opt out of a proposed change in the terms of the credit card agreement;

(4) the manner and methods in which materials and information are presented to consumers, and the degree of conspicuousness with which key terms of the agreement are presented;

(5) methods for the accrual of interest;

(6) reading level required to understand the terms of the agreement; and

(7) such other factors as the Director determines are appropriate with respect to such ratings.

(d) CONSIDERATION OF NHTSA PROGRAM.—In carrying out subsection (c), the Director shall consider establishing a 5-star ratings system similar to the New Car Assessment Program administered by the National Highway Traffic Safety Administration of the Department of Transportation.

SA 3850. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, insert between lines 6 and 7, insert the following:

(3) APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, the provisions of subsections (b) and (f) shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of title II, add the following new section and designate accordingly:

SEC. ____.: APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, this title shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED TAXPAYER PROTECTION FROM FANNIE MAE AND FREDDIE MAC.

(a) REESTABLISHING THE MAXIMUM TAXPAYER EXPOSURE TO FANNIE MAE AND FREDDIE MAC.— Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding the following new subparagraph:

''(L) LIMITATION ON CERTAIN FUNDING.—The Agency, as conservator, shall prohibit the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association from receiving more than $200,000,000,000 through the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United States Department of the Treasury and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.''.

(b) REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity 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 entity in accordance with generally accepted accounting principles.''.

(c) AFFORDABLE HOUSING GOALS.—

REPEAL.—The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended by striking sections 1331 through 1336 (12 U.S.C. 4561–6).

(2) CONFORMING AMENDMENTS.—Federal Housing Enterprises Financial Safety and Soundness Act of 1992 is amended—

(A) in section 1303(28) (12 U.S.C. 4502(28)), by striking ''and, for the purposes'' and all that follows through ''designated disaster areas'';

(B) in section 1324(b)(1)(A) (12 U.S.C. 4544(b)(1)(A))—

(i) by striking clauses (i), (ii), and (iv);

(ii) in clause (iii), by inserting ''and'' after the semicolon at the end; and

(iii) by redesignating clauses (iii) and (v) as clauses (i) and (ii), respectively;

(C) in section 1338(c)(10) (12 U.S.C. 4568(c)(10)), by striking subparagraph (E);

(D) in section 1339(h) (12 U.S.C. 4569), by striking paragraph (7);

(E) in section 1341 (12 U.S.C. 4581)—

(i) in subsection (a)—

(I) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(III) by striking paragraphs (3) and (4); and

(ii) in subsection (b)(2)—

(I) in subparagraph (A), by inserting ''or'' after the semicolon at the end;

(II) by striking subparagraphs (B) and (C); and

(III) by redesignating subparagraph (D) as subparagraph (B);

(F) in section 1345(a) (12 U.S.C. 4585(a))—

(i) in paragraph (1), by inserting ''or'' after the semicolon at the end;

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

(iii) by striking paragraphs (3) and (4); and

(G) in section 1371(a)(2) (12 U.S.C. 4631(a)(2))—

(i) by striking ''with any housing goal established under subpart B of part 2 of subtitle A of this title,''; and

(ii) by striking ''section 1336 or''.

SA 3851. Mr. VITTER submitted an amendment intended to be proposed to amendment SA 3739 proposed by REID for Mr. DODD (for himself and Mrs. LINCOLN) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail,'' to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 43, insert between lines 6 and 7, insert the following:

(3) APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, the provisions of subsections (b) through (f) shall apply with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of title II, add the following new section and designate accordingly:

SEC. ____.:APPLICABILITY TO FANNIE MAE AND FREDDIE MAC.—Notwithstanding any other provision of law, this title shall apply will respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation in the same manner and to the same extent as those provisions apply to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies.

At the end of subtitle A of title I, add the following:

SEC. 122. ENHANCED TAXPAYER PROTECTION FROM FANNIE MAE AND FREDDIE MAC.

(a) REESTABLISHING THE MAXIMUM TAXPAYER EXPOSURE TO FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding the following new subparagraph:

''(L) LIMITATION ON CERTAIN FUNDING.—The Agency, as conservator, shall prohibit the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association from receiving more than $200,000,000,000 through the Amended and Restated Senior Preferred Stock Purchase Agreement, dated as of September 26, 2008, amended May 6, 2009, and further amended December 24, 2009, between the United States Department of the Treasury and the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.''.

(b) REESTABLISHING SCHEDULED REDUCTION OF MORTGAGE ASSETS OWNED BY FANNIE MAE AND FREDDIE MAC.—Section 1367(b)(2) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617(b)(2)) is amended by adding at the end the following new subparagraph:

''(M) REDUCTION OF OWNED MORTGAGE ASSETS.—

''(i) IN GENERAL.—The Agency, as conservator, shall ensure that a regulated entity

does not own, as of any applicable date, mortgage assets in excess of 90.0 percent of the aggregate amount of mortgage assets that the regulated entity owned on December 31 of each of the previous year, provided, that in no event shall the regulated entity be required under this subparagraph to own less than $250,000,000,000 in mortgage assets.

''(ii) DEFINITION OF MORTGAGE ASSETS.—For purposes of this subparagraph, the term 'mortgage assets' means with respect to a regulated entity, assets of such entity 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 entity in accordance with generally accepted accounting principles.''

SA 3852. Mr. DEMINT (for himself and Mr. VITTER) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. BORDER FENCE COMPLETION.

(a) MINIMUM REQUIREMENTS.—Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

(1) in subparagraph (A), by adding at the end the following: ''Fencing that does not effectively restrain pedestrian traffic (such as vehicle barriers and virtual fencing) may not be used to meet the 700-mile fence requirement under this subparagraph.'';

(2) in subparagraph (B)—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) not later than 1 year after the date of the enactment of the Restoring American Financial Stability Act of 2010, complete the construction of all the reinforced fencing and the installation of the related equipment described in subparagraph (A).''; and

(3) in subparagraph (C), by adding at the end the following:

''(iii) FUNDING NOT CONTINGENT ON CONSULTATION.—Amounts appropriated to carry out this paragraph may not be impounded or otherwise withheld for failure to fully comply with the consultation requirement under clause (i).''.

(b) REPORT.—Not later than 180 days after the date of the enactment of the Restoring American Financial Stability Act of 2010, the Secretary of Homeland Security shall submit a report to Congress that describes—

(1) the progress made in completing the reinforced fencing required under section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by this section; and

(2) the plans for completing such fencing not later than 1 year after the date of the enactment of this Act.

SA 3853. Mr. BROWN of Ohio (for himself and Mr. KAUFMAN), submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 92, strike lines 8 through 12 and insert the following:

(ii) liquidity requirements;

(iii) resolution plan and credit exposure report requirements; and

(iv) concentration limits.

On page 105, between lines 2 and 3, insert the following:

(i) LEVERAGE RATIO FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

(1) AMENDMENT.—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended by adding at the end the following:

''SEC. 13. LIMITS ON LEVERAGE.

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

''(1) FINANCIAL COMPANY.—The term 'financial company' means any nonbank financial company, as that term is defined in section 102 of the Restoring American Financial Stability Act of 2010, that is supervised by the Board.

''(2) INCORPORATED TERMS.—The terms 'average total consolidated assets' and 'tier 1 capital' have the meanings given those terms in part 225 of title 12, Code of Federal Regulations, or any successor thereto.

''(b) LEVERAGE RATIO REQUIREMENTS FOR BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—

''(1) LEVERAGE RATIO.—A bank holding company or financial company may not maintain tier 1 capital in an amount that is less than 6 percent of the average total consolidated assets of the bank holding company or financial holding company.

''(2) BALANCE SHEET LEVERAGE RATIO.—A bank holding company or financial company may not maintain less than 6 percent of tier 1 capital for all outstanding balance sheet liabilities, as required to be recorded under section 13(o) of the Securities Exchange Act of 1934.

''(c) EXEMPTIONS.—

''(1) IN GENERAL.—The Board may adjust the leverage ratio requirements under subsection (b) for any class of institutions, based upon the size or activity of such class of institutions. No adjustment made under this paragraph may allow an institution to carry less capital than is required under subsection (b).

''(2) INTERNATIONAL AGREEMENTS.—Consistent with this subsection, the Board may adjust the leverage ratio requirements under subsection (b), as necessary to harmonize such ratios with official international agreements regarding capital standards, if the Board determines that the capital standards under such international agreements are commensurate with the credit, market, operational, or other risks posed by the bank holding companies or financial companies to which such international agreements apply.

''(3) TEMPORARY EMERGENCY EXEMPTION.—

''(A) IN GENERAL.—The appropriate Federal banking agency may, in a manner consistent with this subsection, grant any bank holding company a temporary emergency exemption from the leverage ratio requirements under subsection (b), if the appropriate Federal banking agency determines such an exemption is necessary to prevent an imminent threat to the financial stability of the United States.

''(B) PUBLICATION.—

''(i) PUBLICATION REQUIRED.—The appropriate Federal banking agency shall publish a notice of any exemption granted under this paragraph in the Federal Register within a reasonable period after granting the exemption, and in no case later than 90 days after the date on which the exemption is granted.

''(ii) CONTENTS.—The notice under clause (i) shall include—

''(I) the name of the bank holding company or financial company that is granted an exemption;

''(II) the reason for the exemption; and

''(III) a plan detailing the manner by which the bank holding company will be brought into compliance with subsection (b).

''(d) LEVERAGE RATIO REQUIREMENTS FOR OPERATING SUBSIDIARIES OF BANK HOLDING COMPANIES AND FINANCIAL COMPANIES.—Notwithstanding any other provision of law applicable to insured depository institutions, not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, the Board shall promulgate regulations establishing leverage ratio requirements under subsection (b) for the operating subsidiaries of bank holding companies and financial companies.

''(e) PROMPT CORRECTIVE ACTION.—

''(1) AUTHORITIES.—The Board shall require a bank holding company or financial company that violates subsection (b) to comply with the leverage ratio requirements under subsection (b) by—

''(A) selling or otherwise transferring assets or off-balance sheet items to unaffiliated firms;

''(B) terminating 1 or more activities of the bank holding company or financial company; or

''(C) imposing conditions on the manner in which the bank holding company or financial company conducts an activity of the bank holding company or financial company.

''(2) CORRECTIVE ACTION PLAN.—Not later than 60 days after the Board determines that a bank holding company or financial holding company has violated subsection (b), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a plan detailing the manner by which the bank holding company or financial company will be brought into compliance with subsection (b).

''(3) REPORTS TO CONGRESS.—

''(A) WRITTEN REPORTS.—At the end of each 60-day period following the date on which the Board submits a plan under paragraph (2) during which a bank holding company or financial company remains in violation of subsection (b), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the compliance of the bank holding company or financial holding company with the plan.

''(B) TESTIMONY.—At the end of each 120-day period following the date on which the Board submits a plan under paragraph (2) during which a bank holding company or financial company remains in violation of subsection (b), the Board shall testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives with respect to the compliance of the bank holding company or financial holding company with the plan.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

On page 497, line 14, strike ''**SEC. 13**'' and insert ''**SEC. 14**''.

On page 976, between lines 4 and 5, insert the following:

SEC. 919C. FINANCIAL REPORTING.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

''(o) STANDARD BALANCE SHEET CALCULATION FOR REPORTS.—

''(1) STANDARD ESTABLISHED.—Not later than 1 year after the date of enactment of the Restoring American Financial Stability Act of 2010, the Commission, or a standard setter designated by and under the oversight of the Commission, shall establish a standard requiring each that each issuer that is required to submit reports to the Commission under this section record all assets and liabilities of the issuer on the balance sheet of the issuer.

''(2) CONTENTS.—The standard established under paragraph (1) shall require that—

''(A) the recorded amount of assets and liabilities reflect a reasonable assessment by the issuer of the most likely outcomes with respect to the amount of assets and liabilities, given information available at the time of the report;

''(B) each issuer record any financing of assets for which the issuer has more than minimal economic risks or rewards; and

''(C) if an issuer cannot determine the amount of a particular liability, the issuer may exclude that liability from the balance sheet of the issuer only if the issuer discloses an explanation of—

''(i) the nature of the liability and purpose for incurring the liability;

''(ii) the most likely loss and the maximum loss the issuer may incur from the liability;

''(iii) whether any other person has recourse against the issuer with respect to the liability and, if so, the conditions under which such recourse may occur; and

''(iv) whether the issuer has any continuing involvement with an asset financed by the liability or any beneficial interest in the liability.

''(3) COMPLIANCE.—The Commission shall issue rules to ensure compliance with this subsection that allow for enforcement by the Commission and civil liability under this title and the Securities Act of 1933.''.

SA 3854. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1187, line 9, strike ''effective.'' and insert the following: ''effective.

Subtitle K—Additional Amendments to the Securities Laws

SEC. 992. STRENGTHENING ENFORCEMENT BY THE COMMISSION.

(a) NATIONWIDE SERVICE OF SUBPOENAS.—

(1) 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 action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a 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 shall not apply to a subpoena issued under the preceding sentence.''.

(2) 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 action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a 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 shall not apply to a subpoena issued under the preceding sentence.''.

(3) 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 action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a 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 shall not apply to a subpoena issued under the preceding sentence.''.

(4) 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 action or proceeding instituted by the Commission under this title in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a 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 shall not apply to a subpoena issued under the preceding sentence.''.

(b) AUTHORITY TO IMPOSE CIVIL PENALTIES IN CEASE AND DESIST PROCEEDINGS.—

(1) 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.—In any cease-and-desist proceeding under subsection (a), the Commission may impose a civil penalty on a person if the Commission finds, on the record, after notice and opportunity for hearing, that—

''(A) such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation thereunder; and

''(B) such penalty is in the public interest.

''(2) MAXIMUM AMOUNT OF PENALTY.—

''(A) FIRST TIER.—The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

''(B) SECOND TIER.—Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 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 subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 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—

''(I) substantial losses or created a significant risk of substantial losses to other persons; or

''(II) substantial pecuniary gain to the person who committed the act or omission.

''(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.''.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–2(a)) is amended—

(A) by striking the matter following paragraph (4);

(B) in the matter preceding paragraph (1), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(1) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(2) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted under section 21C against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and opportunity for hearing, that such person—

''(A) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(B) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(3) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–9(d)(1)) is amended—

(A) by striking the matter following subparagraph (C);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest, and'';

(C) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end the following:

''(B) CEASE-AND-DESIST PROCEEDINGS.—In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(4) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(i)(1)) is amended—

(A) by striking the matter following subparagraph (D);

(B) in the matter preceding subparagraph (A), by inserting after ''opportunity for hearing,'' the following: ''that such penalty is in the public interest and'';

(C) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and adjusting the margins accordingly;

(D) by striking ''In any proceeding'' and inserting the following:

''(A) IN GENERAL.—In any proceeding''; and

(E) by adding at the end 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 the Commission finds, on the record, after notice and opportunity for hearing, that such person—

''(i) is violating or has violated any provision of this title, or any rule or regulation issued under this title; or

''(ii) is or was a cause of the violation of any provision of this title, or any rule or regulation issued under this title.''.

(c) FORMERLY ASSOCIATED PERSONS.—

(1) 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 violation or abuse was, a member or employee''.

(2) PERSON ASSOCIATED WITH A GOVERNMENT SECURITIES BROKER OR DEALER.—Section 15C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(c)) is amended—

(A) in paragraph (1)(C), by striking ''any person associated, or seeking to become associated,'' and inserting ''any person who is, or at the time of the alleged misconduct was, associated or seeking to become associated''; and

(B) in paragraph (2)—

(i) in subparagraph (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

(ii) in subparagraph (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''.

(3) 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, in the first sentence, 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''.

(4) 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, in the first sentence, 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,''.

(5) 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—

(A) 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

(B) by striking ''such officer or director'' and inserting ''such person''.

(6) 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—

(A) 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

(B) 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''.

(7) PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.—

(A) 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:

''(C) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—For purposes of sections 3(c), 101(c), 105, and 107(c) and the rules of the Board and Commission issued 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 that—

''(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, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

''(ii) the authority to commence a disciplinary proceeding under section 105(c)(1), or impose sanctions under section 105(c)(4), against such person shall apply only with respect to—

''(I) 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.''.

(B) 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''.

(8) 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—

(A) 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

(B) in subparagraph (B)—

(i) by striking ''No associated person'' and inserting ''No current or former supervisory person''; and

(ii) by striking ''any other person'' and inserting ''any associated person''.

(9) 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''.

(d) EXTRATERRITORIAL JURISDICTION OF THE ANTIFRAUD PROVISIONS OF THE FEDERAL SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 22 of the Securities Act of 1933 (15 U.S.C. 77v(a)) is amended by adding at the end the following new subsection:

''(c) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 17(a) involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(2) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa) is amended—

(A) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(B) by adding at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of the antifraud provisions of this title involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(3) UNDER THE INVESTMENT ADVISERS ACT OF 1940.—Section 214 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–14) is amended—

(A) by striking ''The district'' and inserting the following:

''(a) IN GENERAL.—The district''; and

(B) by adding at the end the following new subsection:

''(b) EXTRATERRITORIAL JURISDICTION.—The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 206 involving—

''(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the violation is committed by a foreign adviser and involves only foreign investors; or

''(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.''.

(e) CONTROL PERSON LIABILITY UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(a)) is amended by inserting after ''controlled person is liable'' the following: ''(including to the Commission in any action brought under paragraph (1) or (3) of section 21(d))''.

(f) AIDING AND ABETTING UNDER THE SECURITIES LAWS.—

(1) UNDER THE SECURITIES ACT OF 1933.—Section 15 of the Securities Act of 1933 (15 U.S.C. 77o) is amended—

(A) by striking ''Every person who'' and inserting ''(a) CONTROLLING PERSONS.—Every person who''; and

(B) by adding at the end the following:

''(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS.—For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 20, any person

that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(2) UNDER THE INVESTMENT COMPANY ACT OF 1940.—Section 48 of the Investment Company Act of 1940 (15 U.S.C. 80a–48) is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

''(b) For purposes of any action brought by the Commission under subsection (d) or (e) of section 42, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of any rule or regulation issued under this Act, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.''.

(3) UNDER THE INVESTMENT ADVISERS ACT.—Section 209 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–9) is amended by inserting at the end the following new subsection:

''(f) AIDING AND ABETTING.—For purposes of any action brought by the Commission under subsection (e), any person that knowingly or recklessly has aided, abetted, counseled, commanded, induced, or procured a violation of any provision of this Act, or of any rule, regulation, or order hereunder, shall be deemed to be in violation of such provision, rule, regulation, or order to the same extent as the person that committed such violation.''.

(4) UNDER THE SECURITIES EXCHANGE ACT OF 1934.—Section 20(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(e)) is amended by inserting ''or recklessly'' after ''knowingly''.

SEC. 993. ADDRESSING ISSUES REVEALED BY THE MADOFF FRAUD.

(a) REVISION TO RECORDKEEPING RULE.—

(1) INVESTMENT COMPANY ACT OF 1940 AMENDMENTS.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a–30) is amended—

(A) in subsection (a)(1), by adding at the end the following: ''Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.''; and

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

''(4) RECORDS OF PERSONS WITH CUSTODY OR USE.—

''(A) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(B) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.''.

(2) INVESTMENT ADVISERS ACT OF 1940 AMENDMENT.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following new subsection:

''(d) RECORDS OF PERSONS WITH CUSTODY OR USE.—

''(1) IN GENERAL.—Records of persons having custody or use of the securities, deposits, or credits of a client, that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(2) CERTAIN PERSONS SUBJECT TO OTHER REGULATION.—Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18, United States Code) may satisfy any examination request, information request, or document request described under paragraph (1), by providing the Commission with a detailed listing, in writing, of the securities, deposits, or credits of the client within the custody or use of such person.''.

(b) STREAMLINED HIRING AUTHORITY FOR MARKET SPECIALISTS.—

(1) APPOINTMENT AUTHORITY.—Section 3114 of title 5, United States Code, is amended by striking the section heading and all that follows through the end of subsection (a) and inserting the following:

''§ 3114. Appointment of candidates to certain positions in the competitive service by the Securities and Exchange Commission

''(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service, and any position at the Commission in the competitive service that requires specialized knowledge of financial and capital market formation or regulation, financial market structures or surveillance, or information technology.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 5, United States Code, is amended by striking the item relating to section 3114 and inserting the following:

''3114. Appointment of candidates to positions in the competitive service by the Securities and Exchange Commission.''.

(3) PAY AUTHORITY.—The Commission may set the rate of pay for experts and consultants appointed under the authority of section 3109 of title 5, United States Code, in the same manner in which it sets the rate of pay for employees of the Commission.

(c) SIPC REFORMS.—

(1) REMOVING THE DISTINCTION BETWEEN CLAIMS FOR CASH AND CLAIMS FOR SECURITIES.—The Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) is amended—

(A) in section 8(e)(4)(B) (15 U.S.C. 78fff-2(e)(4)(B)), by striking ''for cash or securities'';

(B) in section 9(a) (15 U.S.C. 78fff–3(a))—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively; and

(C) in section 16(2)(B) (15 U.S.C. 78lll(2)(B)), by striking ''for cash or securities''.

(2) LIQUIDATION OF A CARRYING BROKER-DEALER.—Section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)) is amended—

(A) by striking the undesignated matter following subparagraph (B);

(B) in subparagraph (A), by striking ''any member of SIPC'' and inserting ''the member'';

(C) in subparagraph (B), by striking the comma at the end and inserting a period;

(D) in the matter preceding subparagraph (A), by striking ''If SIPC'' and inserting the following:

''(A) IN GENERAL.—SIPC may, upon notice to a member of SIPC, file an application for a protective decree with any court of competent jurisdiction specified in section 21(e) or 27 of the Securities Exchange Act of 1934, except that no such application shall be filed with respect to a member, the only customers of which are persons whose claims could not be satisfied by SIPC advances pursuant to section 9, if SIPC''; and

(E) by adding at the end the following:

''(B) CONSENT REQUIRED.—No member of SIPC that has a customer may enter into an insolvency, receivership, or bankruptcy proceeding, under Federal or State law, without the specific consent of SIPC.''.

SEC. 994. ENHANCED ABILITY OF COMMISSION TO OBTAIN NEEDED INFORMATION.

(a) INVESTMENT COMPANY EXAMINATION.—Section 31(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)(1)) is amended to read as follows:

''(1) IN GENERAL.—The following records shall be subject, at any time, or from time to time, to such reasonable periodic, special, or other examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest or for the protection of investors:

''(A) All records of a registered investment company.

''(B) All records of a underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of a registered investment company.

''(C) All records required to be maintained and preserved by a investment adviser that is not a majority-owned subsidiary of a registered investment company.

''(D) All records required to be maintained and preserved by a depositor of a registered investment company.

''(E) All records required to be maintained and preserved by a principal underwriter for a registered investment company (other than a closed-end company).''.

(b) EXPANDED ACCESS TO GRAND JURY INFORMATION.—Chapter 215 of title 18, United States Code, is amended by adding at the end the following:

''§ 3323. Access to grand jury information

''(a) DISCLOSURE.—

''(1) IN GENERAL.—Upon motion of an attorney for the government, a court may direct disclosure of matters occurring before a grand jury during an investigation of conduct that may constitute a violation of any provision of the securities laws to the Securities and Exchange Commission for use in relation to any matter within the jurisdiction of the Commission.

''(2) SUBSTANTIAL NEED REQUIRED.—A court may issue an order under paragraph (1) only upon a finding of a substantial need in the public interest.

''(b) USE OF MATTER.—A person to whom a matter has been disclosed under this section shall not use such matter, other than for the purpose for which such disclosure was authorized.

''(c) DEFINITIONS.—As used in this section—

''(1) the terms 'attorney for the government' and 'grand jury information' have the meanings given to those terms in section 3322 of title 18, United States Code; and

''(2) the term 'securities laws' has the same meaning as in section 3(a)(47) of the Securities Exchange Act of 1934.''.

(c) ENHANCED AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION TO CONDUCT SURVEILLANCE AND RISK ASSESSMENT.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended by adding at the end the following:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject, at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–30(b)) is amended by adding at the end the following:

''(5) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(3) DOCUMENT REQUESTS.—Section 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4) is amended by adding at the end the following:

''(e) SURVEILLANCE AND RISK ASSESSMENT.—All persons described in subsection (a) are subject at any time, or from time to time, to such reasonable periodic, special, or other information and document requests by representatives of the Commission as the Commission, by rule or order, deems necessary or appropriate to conduct surveillance or risk assessments of the securities markets, persons registered with the Commission under this title, or otherwise in furtherance of the purposes of this title.''.

(d) PROTECTING CONFIDENTIALITY OF MATERIALS SUBMITTED TO THE COMMISSION.—

(1) SECURITIES EXCHANGE ACT OF 1934.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(A) in subsection (d), by striking ''subsection (e)'' and inserting ''subsection (f)'';

(B) by redesignating subsection (e) as subsection (f); and

(C) by inserting after subsection (d) the following:

''(e) RECORDS OBTAINED FROM REGISTERED PERSONS.—

''(1) IN GENERAL.—Except as provided in subsection (f), the Commission shall not be compelled to disclose records or information obtained pursuant to section 17(b), or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities.

''(2) TREATMENT OF INFORMATION.—For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 17 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.''.

(2) INVESTMENT COMPANY ACT OF 1940.—Section 31 of the Investment Company Act of 1940 (15 U.S.C. 80a-30) is amended—

(A) by striking subsection (c) and inserting the following:

''(c) LIMITATIONS ON DISCLOSURE BY COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.'';

(B) by striking subsection (d); and

(C) by redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

(3) INVESTMENT ADVISERS ACT OF 1940.—Section 210 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-10) is amended by adding at the end the following:

''(d) LIMITATIONS ON DISCLOSURE BY THE COMMISSION.—Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any records or information provided to the Commission under this section, or records or information based upon or derived from such records or information, if such records or information have been obtained by the Commission for use in furtherance of the purposes of this title, including surveillance, risk assessments, or other regulatory and oversight activities. Nothing in this subsection authorizes the Commission to withhold information from the Congress or prevent the Commission from complying with a request for information from any other Federal department or agency requesting the information for purposes within the scope of jurisdiction of that department or agency, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of such section 552. Collection of information pursuant to section 31 shall be an administrative action involving an agency against specific individuals or agencies pursuant to section 3518(c)(1) of title 44, United States Code.''.

(e) EXPANSION OF AUDIT INFORMATION TO BE PRODUCED AND EXCHANGED.—Section 106 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7216) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) PRODUCTION OF DOCUMENTS.—

''(1) PRODUCTION BY FOREIGN FIRMS.—If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, or issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

''(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon the request of the Commission or the Board; and

''(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

''(2) OTHER PRODUCTION.—Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

''(A) produce the audit work papers of the foreign public accounting firm and all other documents related to any such work in response to a request for production by the Commission or the Board; and

''(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.'';

(2) by redesignating subsection (d) as subsection (g); and

(3) by inserting after subsection (c) the following:

''(d) SERVICE OF REQUESTS OR PROCESS.—

''(1) IN GENERAL.—Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section and any process, pleadings, or other papers in any action brought to enforce this section.

''(2) SPECIFIC AUDIT WORK.—Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, or issues an audit report, performs audit work, or performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section and any process, pleading, or other papers in any action brought to enforce this section.

''(e) SANCTIONS.—A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

''(f) OTHER MEANS OF SATISFYING PRODUCTION OBLIGATIONS.—Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.''.

(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—Section 24 of the Securities Exchange Act of 1934 (15 U.S.C. 78x) is amended—

(1) in subsection (d), as amended by subsection (d)(1)(A), by striking ''subsection (f)'' and inserting ''subsection (g)'';

(2) in subsection (e), as added by subsection (d)(1)(C), by striking ''subsection (f)'' and inserting ''subsection (g)'';

(3) by redesignating subsection (f) as subsection (g); and

(4) by inserting after subsection (e) the following:

''(f) SHARING PRIVILEGED INFORMATION WITH OTHER AUTHORITIES.—

''(1) PRIVILEGED INFORMATION PROVIDED BY THE COMMISSION.—The Commission shall not be deemed to have waived any privilege applicable to any information by transferring

that information to or permitting that information to be used by—

''(A) any agency (as defined in section 6 of title 18, United States Code);

''(B) the Public Company Accounting Oversight Board;

''(C) any self-regulatory organization;

''(D) any foreign securities authority;

''(E) any foreign law enforcement authority; or

''(F) any State securities or law enforcement authority.

''(2) NONDISCLOSURE OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—The Commission shall not be compelled to disclose privileged information obtained from any foreign securities authority, or foreign law enforcement authority, if the authority has in good faith determined and represented to the Commission that the information is privileged.

''(3) NONWAIVER OF PRIVILEGED INFORMATION PROVIDED TO THE COMMISSION.—

''(A) IN GENERAL.—Federal agencies, State securities and law enforcement authorities, self-regulatory organizations, and the Public Company Accounting Oversight Board shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by the Commission.

''(B) EXCEPTION.—The provisions of subparagraph (A) shall not apply to a self-regulatory organization or the Public Company Accounting Oversight Board with respect to information used by the Commission in an action against such organization.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'privilege' includes any work-product privilege, attorney-client privilege, governmental privilege, or other privilege recognized under Federal, State, or foreign law;

''(B) the term 'foreign law enforcement authority' means any foreign authority that is empowered under foreign law to detect, investigate or prosecute potential violations of law; and

''(C) the term 'State securities or law enforcement authority' means the authority of any State or territory that is empowered under State or territory law to detect, investigate, or prosecute potential violations of law.''.

(g) CONFORMING AMENDMENT WITH RESPECT TO REGISTRATION.—Section 102(b)(3)(A) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212(b)(3)(A)) is amended by striking ''by the Board'' and inserting ''by the Commission or the Board''.

SEC. 995. MODERNIZATION OF INVESTOR PROTECTIONS.

(a) BENEFICIAL OWNERSHIP AND SHORT-SWING PROFIT REPORTING.—

(1) BENEFICIAL OWNERSHIP REPORTING.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended—

(A) in subsection (d)—

(i) in paragraph (1)—

(I) by inserting after ''within ten days after such acquisition,'' the following: ''or within such shorter period as the Commission may establish, by rule,''; and

(II) by striking ''send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange on which the security is traded, and''; and

(ii) in paragraph (2)—

(I) by striking ''in the statements to the issuer and the exchange, and''; and

(II) by striking ''shall be transmitted to the issuer and the exchange and''; and

(B) in subsection (g)—

(i) in paragraph (1), by striking ''shall send to the issuer of the security and''; and

(ii) in paragraph (2)—

(I) by striking ''sent to the issuer and''; and

(II) by striking ''shall be transmitted to the issuer and''.

(2) SHORT-SWING PROFIT REPORTING.—Section 16(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78p(a)) is amended—

(A) in paragraph (1), by striking ''(and, if such security is registered on a national securities exchange, also with the exchange)''; and

(B) in paragraph (2)(B), by inserting after ''officer'' the following: '', or within such shorter period as the Commission may establish, by rule''.

(b) ENHANCED APPLICATION OF ANTIFRAUD PROVISIONS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 9—

(A) by striking ''registered on a national securities exchange'' each place that term appears and inserting ''other than a government security'';

(B) in subsection (b), by striking ''by use of any facility of a national securities exchange,''; and

(C) in subsection (c), by inserting after ''unlawful for any'' the following: ''broker, dealer, or'';

(2) in section 10(a)(1), by striking ''registered on a national securities exchange'' and inserting ''other than a government security''; and

(3) in section 15(c)(1)(A), by striking ''otherwise than on a national securities exchange of which it is a member''.

(c) DEFINITION OF ''INTERESTED PERSON''.—Section 2(a)(19)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)(A)) is amended—

(1) in clause (vii), by striking the colon at the end and inserting a comma;

(2) by inserting before ''*Provided*,'' the following:

''(viii) any natural person who is a member of a class of persons who the Commission, by rule or regulation, determines are unlikely to exercise an appropriate degree of independence as a result of—

''(I) a material business or professional relationship with such company or any affiliated person of such company; or

''(II) a close familial relationship with any natural person who is an affiliated person of such company:''; and

(3) in clause (vii), by striking ''two'' and inserting ''5''.

(d) LOST AND STOLEN SECURITIES.—Section 17(f)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(1)) is amended—

(1) in subparagraph (A), by striking ''missing, lost, counterfeit, or stolen securities'' and inserting ''securities that are missing, lost, counterfeit, stolen, cancelled, or any other category of securities as the Commission, by rule, may prescribe''; and

(2) in subparagraph (B), by striking ''or stolen'' and inserting ''stolen, cancelled, or reported in such other manner as the Commission, by rule, may prescribe''.

(e) FINGERPRINTING.—Section 17(f)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(f)(2)) is amended—

(1) in the first sentence, by striking ''and registered clearing agency,'' and inserting ''registered clearing agency, registered securities information processor, national securities exchange, and national securities association''; and

(2) in the second sentence, by striking ''or clearing agency,'' and inserting ''clearing agency, securities information processor, national securities exchange, or national securities association,''.

SEC. 996. COMMISSION ORGANIZATIONAL STUDY AND REFORM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Securities and Exchange Commission (in this section referred to as the ''Commission'') shall hire an independent consultant of high caliber who has expertise in organizational restructuring and the operations of capital markets to examine the internal operations, structure, funding, and the need for comprehensive reform of the Commission, as well as the relationship of the Commission with and the reliance by the Commission on self-regulatory organizations and other entities relevant to the regulation of securities and the protection of securities investors that are under the oversight of the Commission.

(2) SPECIFIC AREAS FOR STUDY.—The study required under paragraph (1) shall, at a minimum, include the study of—

(A) the possible elimination of unnecessary or redundant units at the Commission;

(B) improving communications between offices and divisions of the Commission;

(C) the need to put in place a clear chain-of-command structure, particularly for enforcement examinations and compliance inspections;

(D) the effect of high-frequency trading and other technological advances on the market and what the Commission requires to monitor the effect of such trading and advances on the market;

(E) the hiring authorities, workplace policies, and personal practices of the Commission, including—

(i) whether there is a need to further streamline hiring authorities for those who are not lawyers, accountants, compliance examiners, or economists;

(ii) whether there is a need for further pay reforms;

(iii) the diversity of skill sets of Commission employees and whether the present skill set diversity efficiently and effectively fosters the mission of the Commission of investor protection; and

(iv) the application of civil service laws by the Commission;

(F) whether the oversight by the Commission of, and reliance by the Commission on, self-regulatory organizations promotes efficient and effective governance for the securities markets; and

(G) whether adjusting the reliance by the Commission on self-regulatory organizations is necessary to promote more efficient and effective governance for the securities markets.

(b) CONSULTANT REPORT.—Not later than 150 days after the independent consultant is retained under subsection (a), the independent consultant shall submit a report to the Commission and to Congress containing—

(1) a detailed description of any findings and conclusions made while carrying out the study required under subsection (a)(1); and

(2) recommendations for legislative, regulatory, or administrative action that the independent consultant determines appropriate to enable the Commission and other entities on which the independent consultant reports to perform the missions of the Commission, whether mandated by statute or otherwise.

(c) COMMISSION REPORT.—Not later than 6 months after the date on which the consultant submits the report under subsection (b), and every 6 months thereafter during the 2-year period following the date on which the consultant submits the report under subsection (b), the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the

House of Representatives describing the implementation by the Commission of the regulatory and administrative recommendations contained in the report of the independent consultant under subsection (b).

SEC. 997. MUNICIPAL SECURITIES RULEMAKING BOARD.

Section 975(b)(1) of this Act is amended by striking subparagraph (B) and inserting the following:

''(B) by striking the second sentence and inserting the following 'The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 independent individuals, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with knowledge of or experience in the municipal industry (which members are hereinafter referred to as ''public representatives''); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''broker-dealer representatives''), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''bank representatives''), and at least 1 individual who is associated with a municipal advisor (which member is hereinafter referred to as the ''advisor representative'').' ''.

SA 3855. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1055, after line 22, add the following:

(c) LIABILITY FOR SALE OF SECURITIES.—Section 12 of the Securities Act of 1933 (15 U.S.C. 77l) is amended—

(1) in subsection (a)(2)—

(A) by inserting after ''subsection (a) thereof'' the following: '', and whether or not exempted by the provisions of section 4''; and

(B) by inserting after ''prospectus'' the following: '', other offering document,''; and

(2) in subsection (b), by inserting after ''prospectus'' the following: '', other offering document,''.

SA 3856. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1055, after line 22, add the following:

(c) AUTHORITY TO IMPOSE CONDITIONS ON THE AVAILABILITY OF CERTAIN EXEMPTIONS.—

(1) AUTHORITY ESTABLISHED.—Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended—

(A) by striking ''The provisions of section 5'' and inserting the following:

''(a) IN GENERAL.—The provisions of section 5''; and

(B) by adding at the end the following:

''(b) AUTHORITY TO IMPOSE CONDITIONS.—The Commission may, by rules and regulations, condition the availability of any of the exemptions under subsection (a) on such disclosure, filing, or other requirements as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.''.

(2) CONFORMING AMENDMENTS.—

(A) SECURITIES ACT OF 1933.—The Securities Act of 1933 (15 U.S.C. 77a et seq.) is amended—

(i) in section 16(a)(3) (15 U.S.C. 77p(a)(3)) is amended by striking ''section 4(2)'' and inserting ''section 4(a)(2)''; and

(ii) in section 18(b)(4) (15 U.S.C. 77r(b)(4))—

(I) in subparagraph (A), by striking ''section 4'' and inserting ''section 4(a)'';

(II) in subparagraph (B), by striking ''section 4(4)'' and inserting ''section 4(a)(4)''; and

(III) in subparagraph (D), by striking ''section 4(2)'' each place that term appears and inserting ''section 4(a)(2)''.

(B) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(i) in section 15A(j) (15 U.S.C. 78o-3(j)), by striking ''4(2), or 4(6)'' and inserting ''4(a)(2), or 4(a)(6)''; and

(ii) in section 28(f)(5)(E) (15 U.S.C. 778bb(f)) by striking ''section 4(2)'' and inserting ''section 4(a)(2)''.

(C) REVISED STATUTES.—Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended, in the seventh paragraph, by striking ''section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5))'' and inserting ''section 4(a)(5) of the Securities Act of 1933''.

(D) HOME OWNERS' LOAN ACT.—Section 5(c)(1)(R)(i) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(1)(R)(i)) by striking ''section 4(5)'' and inserting ''section 4(a)(5)''.

(E) FEDERAL CREDIT UNION ACT.—Section 107(15)(A) of the Federal Credit Union Act (12 U.S.C. 1757(15)(A)) is amended by striking ''section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5))'' and inserting ''section 4(a)(5) of the Securities Act of 1933''.

(F) SECONDARY MORTGAGE MARKET ENHANCEMENT ACT OF 1984.—Section 106(a)(1) of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1(a)(1)) is amended by striking ''section 4(5)'' each place that term appears and inserting ''section 4(a)(5)''.

SA 3857. Mr. REED submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Page 1268, strike line 24 and all that follows through page 1270, line 10, and insert the following:

(c) EXAMINATIONS.—

(1) IN GENERAL.—The prudential regulator shall, on a periodic basis, examine, or require reports from, each institution referred to in subsection (a) for purposes of ensuring and enforcing compliance with the requirements of Federal consumer financial law.

(2) BUREAU ROLE IN SUPERVISION.—

(A) AGENCY RESPONSIBILITIES.—The prudential regulator shall provide all reports, records, and documentation related to the examination process to the Bureau on a timely and ongoing basis.

(B) BUREAU INVOLVEMENT.—The Bureau may, at its discretion, include an examiner on any examination conducted under paragraph (1). The prudential regulator shall involve such Bureau examiner in the entire examination process, including setting the scope of an examination, participating in the examination, and providing input on the examination report, matters requiring attention and examination ratings.

(d) ENFORCEMENT.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the prudential regulator shall have primary authority to enforce compliance with any Federal consumer financial law by institutions referred to in subsection (a) of any of the consumer financial laws.

(2) COORDINATION WITH PRUDENTIAL REGULATOR.—

(A) REFERRAL.—

(i) IN GENERAL.—When the Bureau has reason to believe that an institution described in subsection (a) has engaged in a material violation of a Federal consumer financial law, the Bureau may recommend in writing to the appropriate agency that the appropriate agency initiate an enforcement proceeding to the extent the appropriate agency is authorized by that Federal law or by this title.

(ii) EXPLANATION.—Any recommendation under clause (i) shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(B) BACKSTOP ENFORCEMENT AUTHORITY OF THE BUREAU.—If the appropriate agency does not, before the end of the 120-day period beginning on the date on which the appropriate agency receives a recommendation under subparagraph (A), initiate an enforcement proceeding, the Bureau may initiate an enforcement proceeding as permitted by Federal law.

SA 3858. Mr. REED (for himself and Mr. AKAKA) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1243, strike line 15, and all that follows through page 1248, line 18.

SA 3859. Mr. REED submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the

financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Strike section 1044 and insert the following:

SEC. 1044. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

(a) IN GENERAL.—Chapter One of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B the following new section:

''SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) DEFINITIONS.—For purposes of this section—

''(1) the term 'national bank' includes—

''(A) any bank organized under the laws of the United States;

''(B) any affiliate of a national bank;

''(C) any subsidiary of a national bank; and

''(D) any Federal branch established in accordance with the International Banking Act of 1978;

''(2) the terms 'affiliate', 'subsidiary', 'includes', and 'including' have the same meanings as in section 3 of the Federal Deposit Insurance Act; and

''(3) the term 'State consumer law' means any law of a State that regulates the manner, content, or terms and conditions of any financial transaction (as may be authorized for national banks to engage in), or any account related thereto, with respect to a consumer.

''(b) STATE CONSUMER LAWS OF GENERAL APPLICATION.—Except as provided in subsection (c), and notwithstanding any other provision of Federal law, any consumer protection provision of a State consumer law of general application, shall apply to a national bank operating within the jurisdiction of that State, including any law relating to—

''(1) unfair or deceptive acts or practices;

''(2) consumer fraud; and

''(3) repossession, foreclosure, and debt collections.

''(c) EXCEPTIONS.—

''(1) IN GENERAL.—Subsection (b) shall not apply with respect to any State consumer law, if—

''(A) the State consumer law discriminates against national banks; or

''(B) the State consumer law is inconsistent with provisions of Federal law, other than this title, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

''(2) RULE OF CONSTRUCTION.—For purposes of paragraph (1), a State consumer law is not inconsistent with Federal law, if the protection that the State consumer law affords consumers is greater than the protection provided under Federal law, as determined by the Bureau of Consumer Financial Protection.

''(d) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—

''(1) IN GENERAL.—Except as provided in paragraph (2), and notwithstanding any other provision of Federal law, any State consumer law shall apply to a national bank operating within the jurisdiction of that State, if such State consumer law—

''(A) is applicable to State banks; and

''(B) was enacted pursuant to or in accordance with, and is not inconsistent with, an Act of Congress, including the Gramm-Leach-Bliley Act, the Consumer Credit Protection Act, and the Real Estate Settlement Procedures Act of 1974, that explicitly or by implication, permits States to exceed or supplement the requirements of any comparable Federal law.

''(2) EXCEPTIONS.—

''(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any State law, if—

''(i) the State consumer law discriminates against national banks; or

''(ii) the State consumer law is inconsistent with provisions of Federal law, other than this title, but only to the extent of the inconsistency (as determined in accordance with the provision of the other Federal law).

''(B) RULE OF CONSTRUCTION.—For purposes of subparagraph (A), a State consumer law is not inconsistent with Federal law, if the protection that the State consumer law affords consumers is greater than the protection provided under Federal law, as determined Bureau of Consumer Financial Protection.

''(e) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability to national banks of any State law which is not described in this section.

''(f) EFFECT OF TRANSFER OF TRANSACTION.—State consumer law applicable to a transaction at the inception of the transaction may not be preempted under Federal law solely because a national bank subsequently acquires the asset or instrument that is the subject of the transaction.

''(g) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the law of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).''.

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

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

NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Senate Committee on Energy and Natural Resources. The hearing will be held on Tuesday, May 18, 2010, at 10 a.m., in room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose is to receive testimony from the Administration on issues related to offshore oil and gas exploration including the accident involving the Deepwater Horizon in the Gulf of Mexico.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send it to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150, or by email to Abigail_Campbell@energy.senate.gov.

For further information, please contact Linda Lance at (202) 224–7556 or Abigail Campbell at (202) 224–1219.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m., to conduct a hearing entitled ''Terrorists and Guns: The Nature of the Threat and Proposed Reforms.''

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

COMMITTEE ON THE JUDICIARY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate, on May 5, 2010, at 10 a.m. in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The Increased Importance of the Violence Against Women Act in a Time of Economic Crisis.''

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m., to conduct a hearing entitled ''Voting By Mail: An Examination of State and Local Experiences.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on May 5, 2010, to conduct a hearing entitled ''TBI: Progress in Treating the Signature Wounds of the Current Conflicts.'' The Committee will meet in room 418 of the Russell Senate Office Building beginning at 9:30 a.m.

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

SUBCOMMITTEE ON CLEAN AIR AND NUCLEAR SAFETY

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air and Nuclear Safety of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on May 5, 2010, at 10 a.m. in room 406 of the Dirksen Office Building.

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

SUBCOMMITTEE ON NATIONAL PARKS

Mr. DURBIN. Mr. President, I ask unanimous consent that the Subcommittee on National Parks be authorized to meet during the session of the Senate on May 5, 2010, at 2:30 p.m., in room SD–366 of the Dirksen Senate Office Building.

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

PRIVILEGES OF THE FLOOR

Mr. HARKIN. Mr. President, I ask unanimous consent that Theodore Dirkx and Christina Blackcloud-Garcia of my staff be granted the privilege of the floor for the duration of today's proceedings.

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

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Paul Grove:									
United States	Dollar				6,261.60				6,261.60
Libya	Dinar		272.79						272.79
Germany	Euro		197.00						197.00
Carol Cribbs:									
United States	Dollar				919.70		72.00		991.70
Colombia	Peso		795.50						795.50
Howard Walgren:									
United States	Dollar				919.70				919.70
Colombia	Peso		795.50				151.00		946.50
Charles Kieffer:									
United States	Dollar				919.70				919.70
Colombia	Peso		795.50				211.00		1,006.50
Howard Sutton:									
United States	Dollar				9,382.00				9,382.00
New Zealand	Dollar		587.00						587.00
Arthur Cameron:									
United States	Dollar				9,382.00				9,382.00
New Zealand	Dollar		587.00						587.00
Allen Cutler:									
United States	Dollar				10,273.30				10,273.30
New Zealand	Dollar		587.00						587.00
Senator Daniel Inouye:									
Japan	Yen		2,490.00						2,490.00
Senator Thad Cochran:									
Japan	Yen		2,490.00						2,490.00
Erik Raven:									
Japan	Yen		1,439.00						1,439.00
Stewart Holmes:									
Japan	Yen		1,671.00						1,671.00
Kay Webber:									
Japan	Yen		1,671.00						1,671.00
Margaret Cummisky:									
Japan	Yen		1,065.00						1,065.00
Drenan Dudley:									
Japan	Yen		3,240.00						3,240.00
United States	Dollar				5,418.30				5,418.30
Ellen Maldonado:									
United States	Dollar				9,873.00				9,873.00
Bahrain	Dinar		381.00						381.00
Kuwait	Dinar		268.00						268.00
United Arab Emirates	Dirham		383.00						383.00
Mary Catherine Fitzpatrick:									
United States	Dollar				9,873.00				9,873.00
Qatar	Riyal		24.00						24.00
Bahrain	Dinar		495.00						495.00
Kuwait	Dinar		268.00						268.00
United Arab Emirates	Dirham		385.30						385.30
Sara Kathleen Hagan:									
United States	Dollar				9,873.00		70.00		9,943.00
Bahrain	Dinar		373.00						373.00
Kuwait	Dinar		268.00						268.00
United Arab Emirates	Dirham		371.00						371.00
Erik Raven:									
United States	Dollar				9,873.00				9,873.00
Qatar	Riyal		645.00						645.00
Bahrain	Dinar		439.00						439.00
Kuwait	Dinar		268.00						268.00
United Arab Emirates	Dirham		695.00		329.00				1,024.00
Senator Sam Brownback:									
United States	Dollar				4,040.69				4,040.69
Israel	Shekel		562.10						562.10
Ariel Wolf:									
United States	Dollar				4,040.69				4,040.69
Israel	Shekel		796.33						796.33
Chuck Alderson:									
United States	Dollar				4,040.69				4,040.69
Israel	Shekel		796.33						796.33
Senator George Voinovich:									
United States	Dollar				8,399.00				8,399.00
Slovenia	Euro		190.00						190.00
Croatia	Kuna		61.00						61.00
Bosnia-Herzegovina	Convertible Mark		96.00						96.00
Serbia	Dinar		216.00						216.00
Joseph Lai:									
United States	Dollar				8,399.00				8,399.00
Slovenia	Euro		190.00						190.00
Croatia	Kuna		61.00						61.00
Bosnia-Herzegovina	Convertible Mark		96.00						96.00
Serbia	Dinar		216.00						216.00
Senator Judd Gregg:									
Syria	Pound		154.00						154.00
India	Rupee		624.00						624.00
Morocco	Dirham		584.00						584.00
Cyprus	Euro		195.00						195.00
Paul Grove:									
Syria	Pound		154.00						154.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
India	Rupee		624.00						624.00
Morocco	Dirham		584.00						584.00
Cyprus	Euro		195.00						195.00
Christopher Gahan:									
Syria	Pound		154.00						154.00
India	Rupee		624.00						624.00
Morocco	Dirham		584.00						584.00
Cyprus	Euro		195.00						195.00
Senator Richard Durbin:									
Tanzania	Shilling		664.20						664.20
Democratic Rep. of Congo	Franc		127.14						127.14
Ethiopia	Birr		680.38						680.38
Sudan	Pound		270.26						270.26
United States	Dollar				9,752.50				9,752.50
Christopher B. Homan:									
Tanzania	Shilling		357.07						357.07
Democratic Rep. of Congo	Franc		189.85						189.85
Ethiopia	Birr		735.56						735.56
Sudan	Pound		321.09						321.09
United States	Dollar				9,752.50				9,752.50
Max Gleischman:									
Tanzania	Shilling		320.79						320.79
Democratic Rep. of Congo	Franc		127.14						127.14
Ethiopia	Birr		613.37						613.37
Sudan	Pound		295.97						295.97
United States	Dollar				9,752.50				9,752.50
Charles Houy:									
United States	Dollar				13,406.20				13,406.20
United Arab Emirates	Dirham		330.00						330.00
Yemen	Rial		179.26						179.26
Djibouti	Franc		638.00						638.00
Ethiopia	Birr		386.75						386.75
Greece	Euro		716.00						716.00
Elizabeth Schmid:									
United States	Dollar				13,406.20				13,406.20
United Arab Emirates	Dirham		330.00						330.00
Yemen	Rial		179.26						179.26
Djibouti	Franc		638.00						638.00
Ethiopia	Birr		386.75						386.75
Greece	Euro		716.00						716.00
Gary Reese:									
United States	Dollar				13,406.20				13,406.20
United Arab Emirates	Dirham		473.00						473.00
Yemen	Rial		179.26						179.26
Djibouti	Franc		638.00						638.00
Ethiopia	Birr		386.75						386.75
Greece	Euro		716.00						716.00
Paul Grove:									
United States	Dollar				9,703.00				9,703.00
Yemen	Rial		158.00						158.00
Saudi Arabia	Riyal		52.27						52.27
Jordan	Dinar		620.00						620.00
Germany	Euro		143.00						143.00
Tim Reiser:									
Guatemala	Quetzal		360.00						360.00
United States	Dollar				1,052.00				1,052.00
Senator George Voinovich:									
United States	Dollar				4,033.10				4,033.10
Belgium	Euro		495.00						495.00
Joseph Lai:									
United States	Dollar				4,033.10				4,033.10
Belgium	Euro		495.00						495.00
Total			45,817.47		200,514.67		504.00		246,836.14

SENATOR DANIEL INOUYE,
Chairman, Committee on Appropriations, Apr. 22, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Brooke F. Buchanan:									
Kuwait	Dollar		159.00						159.00
Afghanistan	Dollar		78.00						78.00
Lebanon	Dollar		62.00						62.00
Israel	Dollar		182.00						183.00
Georgia	Dollar		132.00						132.00
Senator John McCain:									
Afghanistan	Dollar		14.00						14.00
Pakistan	Dollar		9.00						9.00
Lebanon	Dollar		47.00						47.00
Israel	Dollar		23.00						23.00
Lucian L. Niemeyer:									
Germany	Euro		657.72		7,231.10				7,888.82
Adam J. Barker:									
United States	Dollar				10,514.43				10,514.43
Philippines	Dollar		437.93						437.93
Indonesia	Dollar		454.88						454.88
Bangladesh	Dollar		339.60						339.60
Michael J. Noblet:									
United States	Dollar				10,570.00				10,570.00
Philippines	Peso		258.00						258.00
Indonesia	Rupiah		345.00						345.00
Bangladesh	Taka		310.00						310.00
Michael V. Kostiw:									
United States	Dollar				10,514.43				10,514.43
Philippines	Dollar		467.93						467.93

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Indonesia	Dollar		494.88						494.88
Bangladesh	Dollar		439.60						439.60
Senator Lindsey Graham:									
Switzerland	Dollar		48.00						48.00
Germany	Dollar		139.28						139.28
Brooke F. Buchanan:									
Germany	Dollar		425.00						425.00
William G.P. Monahan:									
United States	Dollar				10,853.10				10,853.10
United Arab Emirates	Dirham						315.51		315.51
Pakistan	Rupee		90.00				10.00		100.00
Afghanistan	Afghani		78.00				10.00		88.00
Senator Joseph I. Lieberman:									
Israel	Shekel		744.00						744.00
Vance Serchuk:									
Israel	Shekel		664.00						664.00
Christopher Griffin:									
Israel	Shekel		752.00						752.00
Senator John Thune:									
Afghanistan	Dollar		14.00						14.00
Pakistan	Dollar		9.00						9.00
Lebanon	Dollar		47.00						47.00
Israel	Dollar		23.00						23.00
Gordon Peterson:									
Japan	Dollar		346.00						346.00
United States	Dollar				13,371.00				13,371.00
Marta McLellan Ross:									
Japan	Dollar		294.00						294.00
United States	Dollar				13,371.00				13,371.00
Jason W. Maroney:									
Kuwait	Dollar		135.03						135.03
Pakistan	Dollar		238.08						238.08
Belgium	Dollar		45.26						45.26
Afghanistan	Dollar		13.00						13.00
Senator John McCain:									
Bosnia	Dollar		9.28						9.28
Germany	Dollar		208.92						208.92
Senator Saxby Chambliss:									
Germany	Dollar		230.93						230.93
Senator Jim Webb:									
United States	Dollar				13,371.90				13,371.90
Japan	Yen		704.00						704.00
Senator George S. LeMieux:									
Panama	Balboa		82.25						82.25
Colombia	Peso		146.24						146.24
Brian W. Walsh:									
Honduras	Lempira		6.35						6.35
Panama	Balboa		82.25						82.25
Colombia	Peso		213.01						213.01
Vivian Myrtetus:									
Panama	Balboa		82.25						82.25
Colombia	Peso		131.58						131.58
Senator Mark Udall:									
Germany	Euro		93.32						93.32
Bosnia	Dollar		9.28						9.28
Christian D. Brose:									
Kuwait	Dollar		103.00						103.00
Afghanistan	Dollar		78.00						78.00
Lebanon	Dollar		62.00						62.00
Israel	Dollar		154.00						154.00
Georgia	Dollar		88.00						88.00
Senator Claire McCaskill:									
Kuwait	Dollar		135.03						135.03
Pakistan	Dollar		222.14						222.14
India	Dollar		45.48						45.48
Tressa Guenov:									
Kuwait	Dollar		22.78						22.78
Pakistan	Dollar		12.08						12.08
India	Dollar		143.80						143.80
Belgium	Dollar		45.26						45.26
Senator Joseph I. Lieberman:									
Germany	Euro		205.40						205.40
Christopher Griffin:									
Germany	Euro		150.00						150.00
Vance Serchuk:									
Germany	Euro		360.00						360.00
Senator Carl Levin:									
United States	Dollar				10,845.10				10,845.10
United Arab Emirates	Dirham						340.51		340.51
Pakistan	Rupee		90.00				10.00		100.00
Afghanistan	Afghani		78.00				10.00		88.00
Richard D. DeBobes:									
United States	Dollar				10,853.10				10,853.10
United Arab Emirates	Dirham						315.51		315.51
Pakistan	Rupee		90.00				10.00		100.00
Afghanistan	Afghani		78.00				10.00		88.00
Total			13,178.82		111,495.16		1,031.53		125,705.51

SENATOR CARL LEVIN,
Chairman, Committee on Armed Services, Mar. 31, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Colin McGinnis:									
Panama	Dollar		544.40						544.40

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				1,070.60				1,070.60
Total			544.40		1,070.60				1,615.00

SENATOR CHRISTOPHER DODD,
Chairman, Committee on Banking, Housing, and Urban Affairs, Apr. 1, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE BUDGET FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jeff Merkley:									
Kuwait	Dollar		439.44						439.44
Pakistan	Dollar		459.64						459.64
India	Dollar		387.81						387.81
Belgium	Euro		406.50						406.50
William White:									
Kuwait	Dollar		439.44						439.44
Pakistan	Dollar		472.62						472.62
India	Dollar		387.81						387.81
Belgium	Euro		420.26						420.26
Total			3,413.52						3,413.52

SENATOR KENT CONRAD,
Chairman, Committee on the Budget, Apr. 29, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JAN. 1, TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Chan D. Lieu:									
United States	Dollar				9,711.10				9,711.10
New Zealand	Dollar		1,056.89						1,056.89
Total			1,056.89		9,711.10				10,767.99

SENATOR JOHN D. ROCKEFELLER,
Chairman, Committee on Commerce, Science, and Transportation,
April 28, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Cornyn:									
Cyprus	Euro		56.10						56.10
Syria	Pound		44.81						44.81
India	Rupee		372.61						372.61
Morocco	Dirham		88.09						88.09
Russell Thomasson:									
Cyprus	Euro		89.58						89.58
Syria	Pound		37.97						37.97
India	Rupee		516.67						516.67
Morocco	Dirham		172.63						172.63
Total			1,378.46						1,378.46

SENATOR MAX BAUCUS,
Chairman, Committee on Finance, Apr. 29, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Barrasso:									
Afghanistan	Dollar		14.00						14.00
Pakistan	Rupee		9.00						9.00
Lebanon	Dollar		47.00						47.00
Israel	Shekel		46.00						46.00
Senator Robert Casey, Jr.:									
Belgium	Euro		286.99						286.99
Austria	Euro		45.93						45.93
Senator Bob Corker:									
Panama	Dollar		292.00						292.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Costa Rica	Colon		375.00						375.00
El Savador	Colon		168.00						168.00
Honduras	Lempira		158.00						158.00
Senator Christopher Dodd:									
Panama	Dollar		292.00						292.00
Costa Rica	Colon		168.00						168.00
El Salvador	Dollar		168.00						168.00
Honduras	Dollar		158.00						158.00
Senator Ted Kaufman:									
Pakistan	Rupee		8.00						8.00
Afghanistan	Dollar		5.00						5.00
United States	Dollar				11,943.60				11,943.60
Senator John Kerry:									
Germany	Euro		189.00						189.00
United States	Dollar				3,608.00				3,608.00
Qatar	Riyal		64.09						64.09
India	Rupee		153.28						153.28
United Arab Emirates	Dirham		31.62						31.62
United States	Dollar				8,108.10				8,108.10
Jordan	Dinar		22.44						22.44
Israel	Shekel		164.64						164.64
United States	Dollar				7,180.69				7,180.69
Lebanon	Pound		107.72						107.72
Syria	Pound		49.73						49.73
Italy	Euro		139.70						139.70
United States	Dollar				7,066.30				7,066.30
Senator Jeanne Shaheen:									
Slovenia	Euro		200.00						200.00
Croatia	Kuna		120.00						120.00
Bosnia	Marka		89.00						89.00
Serbia	Dinar		600.00						600.00
United States	Dollar				8,646.80				8,646.80
Senator Roger Wicker:									
Qatar	Riyal		114.17						114.17
Austria	Euro		39.30						39.30
France	Euro		108.80						108.80
United Kingdom	Pound		82.86						82.86
Netherlands	Euro		93.05						93.05
United States	Dollar				3,288.50				3,288.50
Jonah Blank:									
Qatar	Riyal		189.00						189.00
India	Rupee		181.00						181.00
Pakistan	Rupee		115.00						115.00
Thailand	Baht		1,116.00						1,116.00
United States	Dollar				12,350.20				12,350.20
Joshua Blumenfeld:									
Panama	Dollar		192.00						192.00
Costa Rica	Colon		118.00						118.00
El Salvador	Dollar		128.00						128.00
Honduras	Dollar		108.00						108.00
Perry Cammack:									
Jordan	Dinar		202.00						202.00
Israel	Shekel		207.00						207.00
United States	Dollar				6,137.00				6,137.00
Syria	Pound		179.00						179.00
Turkey	Lira		1,967.00						1,967.00
Israel	Shekel		362.00						362.00
United States	Dollar				8,415.49				8,415.49
Sarah Drake:									
Qatar	Riyal		213.50						213.50
Austria	Euro		39.30						39.30
France	Euro		105.50						105.50
Netherlands	Euro		93.05						93.05
Steve Feldstein:									
Brazil	Real		615.00						615.00
United States	Dollar				6,205.70				6,205.70
Frank Jannuzi:									
Russia	Ruble		1,395.00						1,395.00
China	RMB		1,464.00						1,464.00
United States	Dollar				14,184.60				14,184.60
Garrett Johnson:									
United Arab Emirates	Dirham		65.00						65.00
Afghanistan	Afghani		180.00						180.00
Pakistan	Rupee		910.00						910.00
United States	Dollar				8,540.70				8,540.70
Frank Lowenstein:									
Germany	Euro		360.00						360.00
United States	Dollar				3,608.00				3,608.00
Qatar	Riyal		303.00						303.00
United States	Dollar				8,108.10				8,108.10
Jordan	Dinar		140.00						140.00
Israel	Shekel		179.00						179.00
United States	Dollar				3,437.69				3,437.69
Lebanon	Pound		113.72						113.72
Syria	Pound		49.73						49.73
Italy	Euro		238.55						238.55
United States	Dollar				7,066.30				7,066.30
Damian Murphy:									
Belgium	Euro		82.10						82.10
Austria	Euro		98.07						98.07
Stacie Oliver:									
Panama	Dollar		292.00						292.00
Costa Rica	Colon		375.00						375.00
El Salvador	Colon		168.00						168.00
Honduras	Lempira		158.00						158.00
Michael Phelan:									
United Arab Emirates	Dirham		50.00						50.00
Afghanistan	Afghani		122.00						122.00
Pakistan	Rupee		950.00						950.00
United States	Dollar				8,540.70				8,540.70
Christopher Socha:									
Sweden	Krona		579.00						579.00
Estonia	Kroon		879.00						879.00
Latvia	Lat		376.00						376.00
Lithuania	Litas		334.00						334.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				7,557.40				7,557.40
Halie Soifer:									
Afghanistan	Afghani		20.00						20.00
Pakistan	Rupee		8.00						8.00
United States	Dollar				3,592.10				3,592.10
Fatema Sumar:									
Qatar	Riyal		192.00						192.00
India	Rupee		168.00						168.00
Pakistan	Rupee		68.00						68.00
United States	Dollar				4,140.00				4,140.00
Qatar	Riyal		128.00						128.00
United States	Dollar				7,934.70				7,934.70
Atman Trivedi:									
India	Rupee		840.00						840.00
United States	Dollar				6,285.10				6,285.10
Anthony Wier:									
Germany	Euro		230.00						230.00
United States	Dollar				3,608.00				3,608.00
Laura Winthrop:									
United Arab Emirates	Dirham		216.00						216.00
Yemen	Riyal		137.00						137.00
Saudi Arabia	Riyal		207.00						207.00
Israel	Shekel		981.00						981.00
United States	Dollar				9,738.39				9,738.39
Debbie Yamada:									
Morocco	Dirham		306.00						306.00
Spain	Euro		420.00						420.00
Austria	Euro		654.00						654.00
Total			25,176.84		179,292.16				204,469.00

SENATOR JOHN KERRY,
Chairman, Committee on Foreign Relations, Apr. 22, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Michael Enzi:									
Cyprus	Pound		141.24						141.24
Syria	Pound		52.39						52.39
India	Rupee		834.47		93.32				927.79
Morocco	Dirham		90.74						90.74
Senator Sherrod Brown:									
Tanzania	Shilling		422.26						422.26
Democratic Rep of Congo	Franc		197.14						197.14
Ethiopia	Birr		341.13						341.13
Sudan	Dinar		244.38						244.38
United States	Dollar				9,793.60				9,793.60
Douglas Babcock:									
Tanzania	Shilling		273.77						273.77
Democratic Rep of Congo	Franc		102.14						102.14
Ethiopia	Birr		452.34						452.34
Sudan	Dinar		317.12						317.12
United States	Dollar				9,786.60				9,786.60
Total			3,469.12		19,673.52				23,142.64

SENATOR TOM HARKIN,
Chairman, Committee on Health, Education, Labor, and Pensions, Apr. 22, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Wendy R. Anderson:									
United States	Dollar				4,047.40				4,047.40
Netherlands	Euro		629.34		2,228.85				2,858.19
Germany	Euro		826.10		5,210.00				6,036.10
Saudi Arabia	Riyal		105.00						105.00
Yemen	Riyal		650.00						650.00
Bradford D. Belzak:									
United States	Dollar				4,047.40				4,047.40
Netherlands	Euro		620.14						620.14
Germany	Euro		821.50		5,210.00				6,031.50
Saudi Arabia	Riyal		129.00						129.00
Yemen	Riyal		648.00						648.00
Thomas A. Bishop:									
United States	Dollar				3,992.80				3,992.80
Netherlands	Euro		570.41						570.41
Germany	Euro		708.50		5,210.00				5,918.50
Saudi Arabia	Riyal		130.50						130.50
Yemen	Riyal		213.00						213.00
Seamus A. Hughes:									
United States	Dollar				4,047.40				4,047.40
Netherlands	Euro		698.00		2,228.85				2,926.85
Germany	Euro		938.00		5,210.00				6,148.00
Saudi Arabia	Riyal		459.00						459.00
Yemen	Riyal		726.00						726.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Tara L. Shaw:									
United States	Dollar				3,992.80				3,992.80
Netherlands	Euro		575.53						575.53
Germany	Euro		770.21		5,210.00				5,980.21
Saudi Arabia	Riyal		129.79						129.79
Yemen	Riyal		216.06						216.06
Margaret E. Daum:									
Afghanistan	Afghani		28.00						28.00
Pakistan	Rupee		222.10						222.10
India	Rupee		144.40		3,043.90				3,188.30
Belgium	Euro		103.97						103.97
Kuwait	Dinar		413.41						413.41
Senator Claire McCaskill:									
Afghanistan	Afghani		28.00						28.00
Pakistan	Rupee		633.45						633.45
India	Rupee		600.89		3,043.90				3,644.79
Belgium	Euro		629.50						629.50
Kuwait	Dinar		413.41						413.41
Angela L. Youngen:									
United States	Dollar				8,398.80				8,398.80
Slovenia	Euro		190.00						190.00
Croatia	Kuna		61.00						61.00
Bosnia-Herzegovina	Convertible Mark		96.00						96.00
Serbia	Dinar		216.00						216.00
Senator Susan M. Collins:									
United States	Dollar				10,691.00				10,691.00
Switzerland	Swiss Franc		1,054.58						1,054.58
Robert Epplin:									
United States	Dollar				10,691.00				10,691.00
Switzerland	Swiss Franc		423.30						423.30
Benjamin Billings:									
United States	Dollar				4,928.30				4,928.30
Japan	Yen		1,628.00		140.73				1,768.73
Delegation Expenses:									
Kuwait	Dinar						2,113.02		2,113.02
Pakistan	Rupee						2,015.84		2,015.84
Total			17,450.09		83,478.33		4,128.86		105,057.28

SENATOR JOSEPH LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs,
Apr. 30, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Arlen Specter:									
Cyprus	Pound		83.84						83.84
Syria	Pound		17.78						17.78
India	Rupee		355.70						355.70
Morocco	Dirham		137.26						137.26
Christopher Bradish:									
Cyprus	Pound		63.09						63.09
Syria	Pound		47.96						47.96
India	Rupee		536.15						536.15
Morocco	Dirham		93.37						93.37
Senator Amy Klobuchar:									
Cyprus	Euro		85.14						85.14
Syria	Pound		17.77						17.77
India	Rupee		711.54						711.54
Morocco	Dirham		111.52						111.52
Thomas Sullivan:									
Cyprus	Euro		106.49						106.49
Syria	Pound		107.77						107.77
India	Rupee		616.22						616.22
Morocco	Dirham		267.02						267.02
Senator Al Franken:									
United States	Dollar				11,307.00				11,307.00
Pakistan	Rupee		10.00						10.00
Afghanistan	Afghani		15.00						15.00
Jeffrey Lomonaco:									
United States	Dollar				11,031.00				11,031.00
Pakistan	Rupee		10.00						10.00
Afghanistan	Afghani		10.00						10.00
Total			3,403.62		22,338.00				25,741.62

SENATOR PATRICK LEAHY,
Chairman, Committee on the Judiciary, Apr. 29, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Wesley Kungel:									
United States	Dollar				1,600.30				1,600.30
Japan	Yen		2,025.00						2,025.00
Thomas Keith:									
United States	Dollar				1,600.30				1,600.30

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Japan	Yen		2,025.00						2,025.00
Total			4,050.00		3,200.60				7,250.60

SENATOR MARY LANDRIEU,
Chairman, Committee on Small Business & Entrepreneurship, Apr. 19, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
David Koger	Dollar		3,305.50						3,305.50
					10,206.00				10,206.00
Richard Girven	Dollar		2,857.00						2,857.00
	Dollar				10,206.00		130.00		10,336.00
Andrew Kerr			2,960.00						2,960.00
	Dollar				10,206.00				10,206.00
Senator Bill Nelson			1,520.00						1,520.00
	Dollar				14,416.70				14,416.70
Caroline Tess			1,500.00						1,500.00
	Dollar				12,894.70				12,894.70
Greta Lundeberg			1,416.00						1,416.00
	Dollar				12,894.70				12,894.70
Senator Saxby Chambliss			1,173.00						1,173.00
Jennifer Wagner			1,173.00						1,173.00
Senator Evan Bayh			1,569.00						1,569.00
Michael Pevzner			1,569.00						1,569.00
Bryan Smith			2,991.58						2,991.58
	Dollar				9,353.10				9,353.10
Clete Johnson			2,991.58						2,991.58
	Dollar				7,951.00				7,951.00
Senator Christopher Bond			1,427.00						1,427.00
	Dollar				6,270.10				6,270.10
Louis Tucker			4,514.00						4,514.00
					8,926.60				8,926.60
Gordon Matlock			4,514.00						4,514.00
	Dollar				8,926.60				8,926.60
Michael DuBois			1,427.00						1,427.00
	Dollar				5,653.10				5,653.10
Total			36,907.66		117,904.60		130.00		154,942.26

SENATOR DIANNE FEINSTEIN,
Chairman, Committee on Intelligence, Apr. 29, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), JOINT ECONOMIC COMMITTEE FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Chair Carolyn B. Maloney:									
United States	Dollar				3,619.69				3,619.69
Switzerland	Dollar		1,148.00						1,148.00
Total			1,148.08		3,619.69				4,767.77

REPRESENTATIVE CAROLYN MALONEY,
Chairman, Joint Economic Committee, Apr. 28, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Orest Deychakiwsky:									
Ukraine	Hryvnia		2,015.00						2,015.00
United States	Dollar				6,667.50				6,667.50
Winsome Packer:									
Ukraine	Hryvnia		1,782.00						1,782.00
United States	Dollar				1,927.00				1,927.00
Daniel Redfield:									
Ukraine	Hryvnia		1,660.00						1,660.00
United States	Dollar				6,527.00				6,527.00
Winsome Packer:									
Austria	Euro		29,637.99						29,637.99
United States	Dollar				10,715.30				10,715.30
Douglas Davidson:									
Poland	Zloty		1,040.00						1,040.00
Belgium	Euro		1,070.00						1,070.00
United Stated	Dollar				8,712.10				8,712.10
Senator Benjamin Cardin:									
Morocco	Dirham		481.10						481.10
Spain	Euro		736.61						736.61
Austria	Euro		971.29						971.29

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Roger Wicker:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Representative Robert Aderhot:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Fred Turner:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Marlene Kaufmann:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Neil Simon:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Bob Hand:									
Morocco	Dirham		416.10						416.10
Spain	Euro		670.61						670.61
Austria	Euro		907.29						907.29
Josh Shapiro:									
Morocco	Dirham		646.10						646.10
Spain	Euro		901.61						901.61
Austria	Euro		1,471.29						1,471.29
Shelly Han:									
Austria	Euro		1,031.48						1,031.48
United States	Dollar				5,443.90				5,443.90
Orest Deychakiwsky:									
Ukraine	Hryvnia		2,052.00						2,052.00
Germany	Euro		1,029.48						1,029.48
United States	Dollar				6,705.30				6,705.30
Kyle Parker:									
Ukraine	Hryvnia		2,072.00						2,072.00
Germany	Euro		1,029.48						1,029.48
United States	Dollar				6,705.30				6,705.30
Alex Johnson:									
Spain	Euro		2,145.00						2,145.00
United States	Dollar				6,604.11				6,604.11
Shelly Han:									
Tajikistan	Somoni		2,027.00						2,027.00
United States	Dollar				8,599.20				8,599.20
Kazakhstan	Tenge		2,620.89						2,620.89
United States	Dollar				887.98				887.98
Uzbekistan	Som		662.00						662.00
United States	Dollar				1,314.53				1,314.53
Janice Helwig:									
Tajikistan	Somoni		2,145.00						2,145.00
United States	Dollar				8,599.20				8,599.20
Kazakhstan	Tenge		2,620.89						2,620.89
United States	Dollar				887.98				887.98
Uzbekistan	Som		662.00						662.00
United States	Dollar				1,314.53				1,314.53
Total			79,599.21		81,620.93				161,220.14

SENATOR BENJAMIN CARDIN,
Chairman, Commission on Security and Cooperation in Europe,
Apr. 23, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), MAJORITY LEADER FOR TRAVEL FROM JAN. 1 TO MAR. 31, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jessica Lewis:									
Haiti	Dollar				23.30				23.30
Thomas Ross:									
Haiti	Dollar				13.45				13.45
Total					36.75				36.75

SENATOR HARRY REID,
Majority Leader, Apr. 15, 2010.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL McCONNELL FOR TRAVEL FROM JAN. 6 TO JAN. 11, 2010

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mitch McConnell:									
Kuwait	Dollar		220.46						220.46
Pakistan	Dollar		90.00						90.00
Afghanistan	Dollar		156.00						156.00
Senator Mike Crapo:									
Kuwait	Dollar		463.74						463.74
Pakistan	Dollar		160.00						160.00
Afghanistan	Dollar		156.00						156.00
Senator Lisa Murkowski:									
Kuwait	Dollar		263.74						263.74

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL McCONNELL FOR TRAVEL FROM JAN. 6 TO JAN. 11, 2010—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Pakistan	Dollar		90.00						90.00
Afghanistan	Dollar		156.00						156.00
Senator Roger F. Wicker:									
Kuwait	Dollar		463.74						463.74
Pakistan	Dollar		160.00						160.00
Afghanistan	Dollar		156.00						156.00
Brian Monahan:									
Kuwait	Dollar		436.74						436.74
Pakistan	Dollar		160.00						160.00
Afghanistan	Dollar		156.00						156.00
Kyle Simmons:									
Kuwait	Dollar		220.74						220.74
Pakistan	Dollar		160.00						160.00
Afghanistan	Dollar		156.00						156.00
Tom Hawkins:									
Kuwait	Dollar		278.74						278.74
Pakistan	Dollar		90.00						90.00
Afghanistan	Dollar		156.00						156.00
Roy Brownell:									
Kuwait	Dollar		233.36						233.36
Pakistan	Dollar		160.00						160.00
Afghanistan	Dollar		156.00						156.00
* Delegation Expenses:									
Kuwait							1,543.22		1,543.22
Pakistan							615.07		615.07
Total			4,899.26				2,158.29		7,057.55

SENATOR MITCH McCONNELL,
Republican Leader, Mar. 8, 2010.

FASTER FOIA ACT OF 2010

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No 350, S. 3111.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3111) to establish the Commission on Freedom of Information Act Processing Delays.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 3111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMMISSION ON FREEDOM OF INFORMATION ACT PROCESSING DELAYS.

(a) SHORT TITLE.—This Act may be cited as the ''Faster FOIA Act of 2010''.

(b) ESTABLISHMENT.—There is established the Commission on Freedom of Information Act Processing Delays (in this Act referred to as the ''Commission'' for the purpose of conducting a study relating to methods to help reduce delays in processing requests submitted to Federal agencies under section 552 of title 5, United States Code (commonly referred to as the ''Freedom of Information Act'').

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 16 members of whom—

(A) 3 shall be appointed by the chairman of the Committee on the Judiciary of the Senate;

(B) 3 shall be appointed by the ranking member of the Committee on the Judiciary of the Senate;

(C) 3 shall be appointed by the chairman of the Committee on Government Reform of the House of Representatives;

(D) 3 shall be appointed by the ranking member of the Committee on Government Reform of the House of Representatives;

(E) 1 shall be appointed by the Attorney General of the United States;

(F) 1 shall be appointed by the Director of the Office of Management and Budget;

(G) 1 shall be appointed by the Archivist of the United States; and

(H) 1 shall be appointed by the Comptroller General of the United States.

[(2) QUALIFICATIONS OF CONGRESSIONAL APPOINTEES.—Of the 3 appointees under each of subparagraphs (A), (B), (C), and (D) of paragraph (1)—

[(A) at least 1 shall have experience in submitting requests under section 552 of title 5, United States Code, to Federal agencies, such as on behalf of nonprofit research or educational organizations or news media organizations; and

[(B) at least 1 shall have experience in academic research in the fields of library science, information management, or public access to Government information.**]**

(2) QUALIFICATIONS OF CONGRESSIONAL APPOINTEES.—Of the 3 appointees under each of subparagraphs (A), (B), (C), and (D) of paragraph (1) at least 2 shall have experience in academic research in the fields of library science, information management, or public access to Government information.

(3) TIMELINESS OF APPOINTMENTS.—Appointments to the Commission shall be made as expeditiously as possible, but not later than 60 days after the date of enactment of this Act.

(d) STUDY.—The Commission shall conduct a study to—

(1) identify methods that—

(A) will help reduce delays in the processing of requests submitted to Federal agencies under section 552 of title 5, United States Code; and

(B) ensure the efficient and equitable administration of that section throughout the Federal Government; **[**and**]**

(2) examine whether the system for charging fees and granting waivers of fees under section 552 of title 5, United States Code, needs to be reformed in order to reduce delays in processing requests**[**.**]**; *and*

(3) examine and determine—

(A) why the Federal Government's use of the exemptions under section 552(b) of title 5, United States Code, increased during fiscal year 2009;

(B) the reasons for any increase, including whether the increase was warranted and whether the increase contributed to FOIA processing delays;

(C) what efforts were made by Federal agencies to comply with President Obama's January 21, 2009 Presidential Memorandum on Freedom of Information Act Requests and whether those efforts were successful; and

(D) make recommendations on how the use of exemptions under section 552(b) of title 5, United States Code, may be limited.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to Congress and the President containing the results of the study under this section, which shall include—

(1) a description of the methods identified by the study;

(2) the conclusions and recommendations of the Commission regarding—

(A) each method identified; and

(B) the charging of fees and granting of waivers of fees; and

(3) recommendations for legislative or administrative actions to implement the conclusions of the Commission.

(f) STAFF AND ADMINISTRATIVE SUPPORT SERVICES.—The Comptroller General of the United States shall provide to the Commission such staff and administrative support services, including research assistance at the request of the Commission, as necessary for the Commission to perform its functions efficiently and in accordance with this section.

(g) INFORMATION.—To the extent permitted by law, the heads of executive agencies, the Government Accountability Office, and the Congressional Research Service shall provide to the Commission such information as the Commission may require to carry out its functions.

(h) COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation for services performed for the Commission.

(i) TRAVEL EXPENSES.—The members of the Commission 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 Commission.

(j) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Commission.

(k) TERMINATION.—The Commission shall terminate 30 days after the submission of the report under subsection (e).

Mr. LEAHY. Mr. President, I commend the Senate in promptly passing the Leahy-Cornyn Faster FOIA Act of 2010—an important measure to improve the administration of the Freedom of Information Act, FOIA. This bill will establish a bipartisan commission to examine the root causes of agency FOIA delays and to recommend to the Congress and the President steps to help eliminate FOIA backlogs.

Senator CORNYN and I first introduced this bill in 2005 to address the growing problem of excessive FOIA delays within our Federal agencies. In the 5 years since, we have successfully worked together to reinvigorate FOIA through several other legislative initiatives. I thank Senator CORNYN for his work on this bill and for his leadership on this issue. I also thank Senators FEINGOLD, WHITEHOUSE and KLOBUCHAR, who have cosponsored this bill. We have also worked with Senator GRASSLEY and Senator SESSIONS to make further improvements.

The Obama administration has also made significant progress in improving the FOIA process. In March, the administration announced that the number of overdue FOIA cases fell by 50 percent governmentwide during the past year. This is good news. But large FOIA backlogs remain a major roadblock to public access to information.

According to the Department of Justice's Freedom of Information Act Annual Report for Fiscal Year 2009, the Department had a backlog of almost 5,000 FOIA requests at the end of 2009. The Department of Homeland Security's report for the same period shows a backlog of 18,918 FOIA requests.

The Associated Press recently reported that more than 67,000 overdue FOIA requests remain outstanding across the Federal Government. Their report also indicates that that the government's use of FOIA exemptions to withhold information from the public which often contributes to FOIA delays increased during fiscal year 2009.

Senator CORNYN and I believe that these delays are simply unacceptable. And that is why we introduced this bill.

The Commission created by the Faster FOIA Act will make key recommendations to Congress and the President for reducing impediments to the efficient processing of FOIA requests. The Commission will also study why Federal agencies are relying more and more on FOIA exemptions to withhold information from the public. In addition, the Commission will examine whether the current system for charging fees and granting fee waivers under FOIA should be modified. The Commission will be made up of government and nongovernmental representatives with a broad range of experience related to handling FOIA requests.

I have said many times that open government is neither a Democratic issue nor a Republican issue—it is truly an American value and virtue that we all must uphold. The Senate will unanimously pass this bipartisan legislation. I hope that the House of Representatives will promptly consider this bill so that Congress can send it to the President before the end of the year.

Mr. DODD. Mr. President, I ask unanimous consent that the committee-reported amendments be considered; that a Leahy-Cornyn amendment, which is at the desk, be agreed to; that the committee-reported amendments be agreed to; that the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The Committee amendments were agreed to.

The amendment (No. 3847) was agreed to, as follows:

(Purpose: To provide for the Archivist of the United States to provide staff and administrative support services to the Commission)

On page 6, line 5, strike ''The Comptroller General of the United States'' and insert ''The Archivist of the United States''.

On page 7, strike lines 1 through 3, and insert the following:

(j) TRANSPARENCY.—All meetings of the Commission shall be open to the public, except that a meeting, or any portion of it, may be closed to the public if it concerns matters or information described in chapter 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before the Commission.

The bill (S. 3111), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 3111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. COMMISSION ON FREEDOM OF INFORMATION ACT PROCESSING DELAYS.

(a) SHORT TITLE.—This Act may be cited as the ''Faster FOIA Act of 2010''.

(b) ESTABLISHMENT.—There is established the Commission on Freedom of Information Act Processing Delays (in this Act referred to as the ''Commission'' for the purpose of conducting a study relating to methods to help reduce delays in processing requests submitted to Federal agencies under section 552 of title 5, United States Code (commonly referred to as the ''Freedom of Information Act'').

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 16 members of whom—

(A) 3 shall be appointed by the chairman of the Committee on the Judiciary of the Senate;

(B) 3 shall be appointed by the ranking member of the Committee on the Judiciary of the Senate;

(C) 3 shall be appointed by the chairman of the Committee on Government Reform of the House of Representatives;

(D) 3 shall be appointed by the ranking member of the Committee on Government Reform of the House of Representatives;

(E) 1 shall be appointed by the Attorney General of the United States;

(F) 1 shall be appointed by the Director of the Office of Management and Budget;

(G) 1 shall be appointed by the Archivist of the United States; and

(H) 1 shall be appointed by the Comptroller General of the United States.

(2) QUALIFICATIONS OF CONGRESSIONAL APPOINTEES.—Of the 3 appointees under each of subparagraphs (A), (B), (C), and (D) of paragraph (1) at least 2 shall have experience in academic research in the fields of library science, information management, or public access to Government information.

(3) TIMELINESS OF APPOINTMENTS.—Appointments to the Commission shall be made as expeditiously as possible, but not later than 60 days after the date of enactment of this Act.

(d) STUDY.—The Commission shall conduct a study to—

(1) identify methods that—

(A) will help reduce delays in the processing of requests submitted to Federal agencies under section 552 of title 5, United States Code; and

(B) ensure the efficient and equitable administration of that section throughout the Federal Government;

(2) examine whether the system for charging fees and granting waivers of fees under section 552 of title 5, United States Code, needs to be reformed in order to reduce delays in processing requests; and

(3) examine and determine—

(A) why the Federal Government's use of the exemptions under section 552(b) of title 5, United States Code, increased during fiscal year 2009;

(B) the reasons for any increase, including whether the increase was warranted and whether the increase contributed to FOIA processing delays;

(C) what efforts were made by Federal agencies to comply with President Obama's January 21, 2009 Presidential Memorandum on Freedom of Information Act Requests and whether those efforts were successful; and

(D) make recommendations on how the use of exemptions under section 552(b) of title 5, United States Code, may be limited.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report to Congress and the President containing the results of the study under this section, which shall include—

(1) a description of the methods identified by the study;

(2) the conclusions and recommendations of the Commission regarding—

(A) each method identified; and

(B) the charging of fees and granting of waivers of fees; and

(3) recommendations for legislative or administrative actions to implement the conclusions of the Commission.

(f) STAFF AND ADMINISTRATIVE SUPPORT SERVICES.—The Archivist of the United States shall provide to the Commission such staff and administrative support services, including research assistance at the request of the Commission, as necessary for the Commission to perform its functions efficiently and in accordance with this section.

(g) INFORMATION.—To the extent permitted by law, the heads of executive agencies, the Government Accountability Office, and the Congressional Research Service shall provide to the Commission such information as the

Commission may require to carry out its functions.

(h) COMPENSATION OF MEMBERS.—Members of the Commission shall serve without compensation for services performed for the Commission.

(i) TRAVEL EXPENSES.—The members of the Commission 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 Commission.

(j) TRANSPARENCY.—All meetings of the Commission shall be open to the public, except that a meeting, or any portion of it, may be closed to the public if it concerns matters or information described in chapter 552b(c) of title 5, United States Code. Interested persons shall be permitted to appear at open meetings and present oral or written statements on the subject matter of the meeting. The Commission may administer oaths or affirmations to any person appearing before the Commission.

(k) TERMINATION.—The Commission shall terminate 30 days after the submission of the report under subsection (e).

CLARIFYING THE TERM ''CENSUS''

Mr. DODD. Mr. President, I ask unanimous consent that the Homeland Security and Governmental Affairs Committee be discharged from further consideration of H.R. 5148, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5148) to amend title 39, United States Code, to clarify the instances in which the term ''census'' may appear on mailable matter.

There being no objection, the Senate proceeded to consider the bill.

Mr. DODD. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5148) was ordered to a third reading, was read the third time, and passed.

NATIONAL CHARTER SCHOOLS WEEK

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 514, submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 514) congratulating the students, parents, teachers, and administrators of charter schools across the United States for ongoing contributions to education and supporting the ideals and goals of the 11th annual National Charter Schools Week, to be held May 2 through May 8, 2010.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 514) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 514

Whereas charter schools deliver high-quality public education and challenge all students to reach their potential;

Whereas charter schools promote innovation and excellence in public education;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that respond to the needs of communities, families, and students in the United States, and promote the principles of quality, accountability, choice, and innovation;

Whereas, in exchange for flexibility and autonomy, charter schools are held accountable by their sponsors for improving student achievement and for the financial and other operations of the charter schools;

Whereas 40 States, the District of Columbia, and Guam have passed laws authorizing charter schools;

Whereas 4,956 charter schools are operating nationwide, serving more than 1,600,000 students;

Whereas, in fiscal year 2010 and the 16 previous fiscal years, Congress has provided a total of more than $2,734,370,000 in financial assistance to the charter school movement through grants for planning, startup, implementation, dissemination, and facilities;

Whereas numerous charter schools improve the achievements of students and stimulate improvement in traditional public schools;

Whereas charter schools are required to meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) in the same manner as traditional public schools;

Whereas charter schools often set higher and additional individual goals than the requirements of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to ensure that charter schools are of high quality and truly accountable to the public;

Whereas charter schools give parents the freedom to choose public schools, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and the communities served by the charter schools;

Whereas more than 50 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill more than 1,100 average-sized charter schools;

Whereas the President has called for doubling the Federal support for charter schools, including replicating and expanding the highest performing charter models to meet the dramatic demand created by the more than 365,000 children on charter school waiting lists; and

Whereas the 11th annual National Charter Schools Week is to be held May 2, through May 8, 2010: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the students, parents, teachers, and administrators of charter schools across the United States for ongoing contributions to education, the impressive strides made in closing the persistent academic achievement gap in the United States, and improving and strengthening the public school system in the United States;

(2) supports the ideals and goals of the 11th annual National Charter Schools Week, a week-long celebration to be held May 2 through May 8, 2010, in communities throughout the United States; and

(3) encourages the people of the United States to hold appropriate programs, ceremonies, and activities during National Charter Schools Week to demonstrate support for charter schools.

ORDERS FOR THURSDAY, MAY 6, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m., Thursday, May 6; that following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of S. 3217, Wall Street reform, as provided for under the previous order.

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

PROGRAM

Mr. DODD. Mr. President, under the previous order, at 10 a.m., the Senate will proceed to vote in relation to the Tester-Hutchison amendment regarding insurance premiums.

ORDER FOR ADJOURNMENT

Mr. DODD. If there is no further business to come before the Senate, I ask it adjourn under the previous order, following the remarks of Senator MARK UDALL of Colorado.

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

The Senator from Colorado.

Mr. UDALL of Colorado. Mr. President, are we in morning business?

The PRESIDING OFFICER. Yes, we are.

AMENDMENT NO. 3778 TO S. 3217

Mr. UDALL of Colorado. Mr. President, I rise today to speak about a bipartisan amendment which Senator LUGAR and I have filed based on our bill, the Fair Access to Credit Scores Act of 2010. This amendment is cosponsored by 17 of our colleagues from both sides of the aisle, which I have to say is a rare bipartisan piece of legislation. Our amendment corrects one of the fundamental inequities in our financial system by giving Americans free annual access to their credit score.

The problem is that most people have been misled to believe that people have access to a free credit score, but that simply is not true. They only have access to their report. A credit report

tells consumers what outstanding credit accounts they have open, such as student loans or credit cards, perhaps a car or home loan. Unfortunately, it tells Americans little else. On the other hand, your credit score, which our legislation makes available, has the critical information consumers need to know.

This score is the very first point of entry into our entire financial system which rates each and every one of us. It is a number that banks, lenders, and large financial firms have easy access to, while hard-working Americans—the engine of our economy—do not have access to it. A credit score affects consumers' interest rates, monthly payments on home loans, and can even affect a consumer's ability to buy a car, rent an apartment or get phone or Internet service. They can be paying interest rates on their home loan, car loan, or student loan which are two to three times higher because of their credit score. This inequity absolutely needs to be fixed if Americans are to take control of their finances. How do we expect them to do that if they do not know if their credit score is bad or good?

Mr. President, I will be insisting on a vote because we must put consumers back in control of their finances by offering Americans annual access to their credit score when they access their free annual credit report.

I know lobbyists have been calling everyone in the Capitol. These credit reporting agencies have misled Americans for years, and now their lobbyists are trying to mislead my colleagues in the Senate. They are making calls and asking Members to fight this transparency and coming up with all sorts of phony arguments. The truth is, this amendment accomplishes what the television commercials and their fine print have claimed for years—the offer of a free credit score.

Our bipartisan amendment would simply require that a credit score be included when a consumer accesses their free annual credit report once per year from each agency. This would provide some context for consumers who access their free annual credit report and allow them to take responsibility for their financial situation.

Since we filed this amendment—and I want to thank the Presiding Officer who has joined me on this amendment—credit reporting agencies and their lobbyists have been hard at work perpetuating fine-print arguments. They claim our amendment would confuse consumers; that the information belongs to the agency and not the people; and they have even been threatening Members it will cost them jobs in their particular State.

I don't have to tell those watching and my colleagues that those arguments are overstated and are really no grounds for keeping Americans from having access to their individual credit score. According to credit reporting agencies and their lobbyists, providing a free score for transparency and therefore a sense of financial standing simply would distract and confuse the American consumer.

How can they say these scores would confuse Americans, even though they are happy to sell them that same information? These same lobbyists we are discussing also claim that credit scores belong to them. In other words, a credit score to gauge the creditworthiness of a consumer, based upon their personal information, is the property of the credit reporting agency, not the consumer. So, in other words, they are making the argument it belongs to the agency, not to the individual who creates the credit score.

I can't help but wonder: Would a doctor say someone's blood pressure reading is their information, not their patient's?

I have to say I am disappointed to hear these credit reporting agencies are even making the suggestion that this amendment might result in job losses in their particular States. These are tough times, and who wouldn't be moved by the argument about jobs. But what they do not tell you when they make that argument is that they opposed the 2003 law that required disclosure of consumers' credit reports and the industry has tripled its business since that time. It has tripled because consumers have gotten engaged. They care about those credit reports. And I would predict that if we have free credit scores, it will only enhance the interest of consumers to have additional financial literacy.

Talking about jobs, I have some of these jobs in my State, but I don't consider deceptive practices and keeping Americans from their personal information to be a kind of jobs program. In fact, if anything, not knowing your credit score could be the greatest threat to employment for any given individual. Employers are increasingly using this information to decide whether to hire one person over another.

I came to the Senate floor yesterday to speak about the frequent television commercials and Internet advertisements we have all seen which falsely claim to offer consumers free access to their credit score. Their ads clearly indicate to Americans that their credit score is critical information. What they do not tell you—and I know the Presiding Officer shares some personal experiences with me on this account—is that they want to lure you into a costly monthly monitoring service that can cost hundreds of dollars a year.

What is comical about all this is that credit reporting agency representatives are walking the Halls of Congress as I speak telling Members that our bill is somehow unfair and unfounded. They want to protect a Federal law that has given them a monopoly on these scores and continues to direct unwitting consumers their way. They are using the same tactics of confusion and misdirection to fight our amendment.

We agree with the credit reporting agencies that a credit score is important information, and perhaps their misleading ads, if anything, have convinced consumers they need to know this information. However, luring Americans into a costly credit monitoring service is simply not fair.

As I begin to close, I want to say that we have all come to the floor this week from both sides of the aisle explaining that what we want to do is to protect consumers and to do what is right for Main Street in this important and historic bill we are considering. We have a chance to right this wrong here and now. That is why the Consumer Federation of America, Third Way, the Consumers Union, and a wide range of consumer advocates support this legislation.

While free access to a consumer's credit score is only a small part of the larger reforms that are needed, it addresses one of the fundamental inequities that pervade the financial system.

I wish to thank a group of bipartisan Senators who have held strong amidst the lobbying blitz by these large multibillion-dollar entities to stand with consumers and cosponsors of my bipartisan amendment. That list includes Senators LUGAR, BOND, COCHRAN, BROWN of Massachusetts, SCHUMER, LIEBERMAN, LEVIN, HAGAN, BROWN of Ohio, SHAHEEN, MCCASKILL, LAUTENBERG, MENENDEZ, TOM UDALL, GILLIBRAND, BURRIS, and BEGICH.

I hope and expect more Members will join us in cosponsoring this amendment and vote for it when it comes up for a vote.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. UDALL of Colorado. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider en bloc the following nominations on the Executive Calendar: Nos. 832, 833, 834, and 835; that the nominations be confirmed en bloc, that the motions to reconsider be considered made and laid on the table en bloc, that any statements relating to the nominations be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF JUSTICE

David B. Fein, of Connecticut, to be United States Attorney for the District of Connecticut for the term of four years.

Zane David Memeger, of Pennsylvania, to be United States Attorney for the Eastern District of Pennsylvania for the term of four years.

Clifton Timothy Massanelli, of Arkansas, to be United States Marshal for the Eastern District of Arkansas for the term of four years.

Paul Ward, of North Dakota, to be United States Marshal for the District of North Dakota for the term of four years.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate resumes legislative session.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. The Senate will stand adjourned until Thursday, 9:30 a.m., May 6.

Thereupon, the Senate, at 6:46 p.m., adjourned until Thursday, May 6, 2010, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate:

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. BURTON M. FIELD

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. JAMES H. RODMAN, JR.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. VICTOR M. BECK

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. GERALD W. CLUSEN

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. BRYAN P. CUTCHEN

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPTAIN KELVIN N. DIXON
CAPTAIN MARTHA E.G. HERB
CAPTAIN BRIAN L. LAROCHE
CAPTAIN LUKE M. MCCOLLUM
CAPTAIN JOHN C. SADLER

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE REGULAR AIR FORCE UNDER TITLE 10, U.S.C., SECTION 531(A):

To be major

KSHAMATA SKEETE

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

ALAN C. CRANFORD
DIANA A. CRAUN
JEFFERY R. EDGE
JON M. HARRISON
SEVERO V. MARTINEZ
JOHN O. PAYNE
FRANKLIN D. POWELL
MARIA C. POWERS
LISSA-BETH SINGER
WILLIAM A. WARD

THE FOLLOWING NAMED INDIVIDUAL FOR REGULAR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY DENTAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be major

ADAM S. COLOMBO

THE FOLLOWING NAMED INDIVIDUALS FOR REGULAR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES ARMY MEDICAL CORPS UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

To be colonel

CHRISTOPHER W. SOIKA

To be lieutenant colonel

DIANE INDYK

To be major

MONESH J. KAPADIA
ANN V. MCKANE
ANITA F. QURESHI
ELIZABETH REMEDIOS

IN THE NAVY

THE FOLLOWING NAMED INDIVIDUAL TO THE GRADE INDICATED IN THE REGULAR NAVY UNDER TITLE 10, U.S.C., SECTION 531:

To be lieutenant commander

JOHN J. KEMERER

THE FOLLOWING NAMED OFFICERS FOR TEMPORARY APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 5721:

To be lieutenant commander

ROBIN E. ALFONSO
ADRIAN C. BAREFIELD
CHRISTOPHER L. BARNES
BRIAN A. BETHEA
PAUL M. BLODGETT
MARK E. BOAZ
CHRISTOPHER J. CLAY
ERIK D. COPLIN
MICHAEL S. CORBETT
WILLIAM A. DENNIS
RONALD D. DUNCAN
CEDRIC B. EDWARDS
PETER R. FANNO
STANLEY E. FLEMING
LEONARD E. HAYNES
STEPHEN J. HENZ
CHARLES E. JENKINS
JONAS B. KELSALL
ZACHARY S. KING
JOHN J. KINGSBURY
RICHARD I. LAWLOR
JASON N. LESTER
THOMAS L. LOOP
DANNY R. MADISON
CHARLES B. MYERS IV
GEORGE S. PETERSEN
JOSEPH J. PISONI
NATHAN L. ROWAN
JEREMY P. SCHAUB
ANDREW J. SERVAES
WILLIAM A. SHAFER
TODD R. SMITH
KIRK A. SOWERS
NATHANIEL THOMPSON
KENNETH A. WALLER, JR.
CHADRICK O. WITHROW

CONFIRMATIONS

Executive nominations confirmed by the Senate, Wednesday, May 5, 2010:

THE JUDICIARY

NANCY D. FREUDENTHAL, OF WYOMING, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF WYOMING.

DENZIL PRICE MARSHALL JR., OF ARKANSAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF ARKANSAS.

GLORIA M. NAVARRO, OF NEVADA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF NEVADA.

DEPARTMENT OF JUSTICE

DAVID B. FEIN, OF CONNECTICUT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF CONNECTICUT FOR THE TERM OF FOUR YEARS.

ZANE DAVID MEMEGER, OF PENNSYLVANIA, TO BE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF PENNSYLVANIA FOR THE TERM OF FOUR YEARS.

CLIFTON TIMOTHY MASSANELLI, OF ARKANSAS, TO BE UNITED STATES MARSHAL FOR THE EASTERN DISTRICT OF ARKANSAS FOR THE TERM OF FOUR YEARS.

PAUL WARD, OF NORTH DAKOTA, TO BE UNITED STATES MARSHAL FOR THE DISTRICT OF NORTH DAKOTA FOR THE TERM OF FOUR YEARS.