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Senate

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

PRAYER

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

Let us pray.

Our Father in heaven, You have already endowed our Senators with abilities they can use in faithful service to You and country. Make them faithful stewards of Your gifts, as they live to bring glory to Your Name. Lord, undergird them with Your enabling might so that their labors will produce a rich harvest of meaningful accomplishments. May they be Your candles, illuminating the world around them with the light of Your grace and peace. Empower them to persevere and to fight the good fight of faith. Help them to be open and honest with each other, to mean what they say and to say what they mean.

We pray in Your sacred Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JEANNE SHAHEEN led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, May 11, 2010.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Madam President, today the Senate will resume consideration of the Wall Street reform legislation. There will be up to 80 minutes for debate with respect to the Sanders and Vitter amendments. We will vote on those matters at around 11:30 a.m. today. The Senate will recess from 12:30 to 2:15 p.m. to allow for the weekly caucus luncheons.

TRIBUTE TO SENATOR JIM BUNNING

Mr. REID. Madam President, this past Sunday, a young pitcher for the Oakland Athletics threw a perfect game. For those of you who do not know baseball, the Oakland Athletics is a baseball team, and throwing a perfect game is truly a big deal. It is such a big deal, it is only the 19th time this has ever happened—and baseball started keeping records in 1880-something—and this is the first time it happened on Mother's Day.

Someone did throw a perfect game on Father's Day. On that Sunday, more than 45 years ago, one of our colleagues made history by accomplishing one of the most remarkable, most elusive, and most coveted accomplishments in all of athletics, throwing a perfect game in Major League Baseball. That pitcher was the junior Senator from Kentucky, JIM BUNNING. He threw the second no-hitter of his Hall of Fame career, and I repeat: this time, a perfect game.

To show how stupendous this game Senator BUNNING pitched was, understand this young man who pitched a perfect game last Sunday did so, I think, throwing 108 pitches, something like that. JIM BUNNING threw 90 pitches. This is unbelievable, that in 9 innings someone could pitch a whole baseball game and throw only 90 pitches. It is a rare occurrence in modern day baseball for someone to complete a game, but to complete a game—and a perfect game—in 90 pitches is truly amazing.

Sometimes in this body, this Senate, our political passions or legislative objectives get in the way of our personal relationships and the respect we show for one another. When that happens, we do a disservice to the citizens we serve. The Senate was created as a place for leaders to work for the American people, and the only way to do that work is to work together, not against each other.

We surely have our differences, just as those we represent do not see eye to eye on every issue. That is inherent in a representative democracy, and none of us is perfect. As Senator JIM BUNNING once said:

> Everybody makes mistakes. The only time I've ever been perfect was for about two hours and 10 minutes on June 21, 1964.

But we should also be able to appreciate those differences and appreciate the distinguished men and women who make up this body, the Senate. We have combat veterans. We have a man who has won the Congressional Medal of Honor for his valor in combat. We have doctors. We have teachers, farmers, entrepreneurs, Governors, Cabinet Secretaries. We have an astronaut, the Senator from Florida, and we have a Hall of Fame pitcher, whom I just talked about.

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

WALL STREET REFORM

The day before the perfect game on this past Sunday, a story appeared on the front page of the Washington Post. The story began this way:

Something unusual is taking place on the Senate floor: Republicans and Democrats are working together on a major piece of legislation.

It is a shame that bipartisan cooperation passes for news these days, not to mention front-page news in one of our Nation's largest newspapers.

But I hope that collaboration continues this week as we vote on amendments from both sides, as we move closer to a final vote on this very important piece of legislation. Reforming the rules of the road on Wall Street is critical to our Nation's future. We need to restore the American people's trust in our financial system.

The American people demand we act. Families demand we safeguard their savings. Seniors demand we protect their pensions. They have seen big bankers gamble away so much of their money—not the bankers' money but our money—their retirements, and their home equity, which has been shaken. The last thing they want is for their leaders to waste their time also.

So I still hope we can pass Wall Street accountability reforms this week. I am going to do everything I can to see that happens.

SUPREME COURT NOMINEE

Let's talk about the Supreme Court for just a short time. We have accomplished much in the first few months of this year. It has been difficult, but we have done a lot. But we have so much more to do. On that list is one of our most important responsibilities as Senators: giving our advice and consent to the President's nominees for the courts and in this instance the Supreme Court.

In the day or so since President Obama asked our Solicitor General, Elena Kagan, to serve as the Court's 112th Justice, she has received bipartisan praise for her intellect, her dedication to public service, and her ability to bring people together, especially when they disagree. She has produced impressive work as an academic, contributed to lifesaving legislation as a lawyer, and has been a policy aide at the highest levels. She has inspired students as the dean of Harvard Law School and made her country and her fellow citizens stronger as Solicitor General. So I commend President Obama for choosing her to serve on the Supreme Court.

My No. 1 goal for this new Supreme Court Justice—I have stated it publicly before the Judiciary Committee; I have told the President himself—let's stop having judges go on the Supreme Court. I wanted someone who had not worn the robe, someone who had a little common sense separate and apart from the Supreme Court.

I know those Justices have common sense, but they have worn those robes a long time, and I think it is good to get a fresh insight into what is going on in the world. Elena Kagan is a lawyer and scholar so respected because she knows the value of listening to all sides of an argument before making a judgment. In that sense, she is a good role model for her own confirmation process. Let's listen to what she has to say, to what those who know her have to say about her, and to the American people, who demand that the Supreme Court puts the rights of people ahead of the wallets of corporate America.

My Republican colleagues—I have heard some in the media say: Well, she is not experienced enough. I developed a personal relationship with Chief Justice Rehnquist. I developed that respect for him for a couple reasons. No. 1, when I was chairman of the Democratic Policy Committee, I did something for which people said: Why are you bothering? He will never do that. I called him and said: Mr. Justice, would you come over to the Senate and talk to my Democratic Senators? He said: I would be happy to.

Over he comes. What a wonderful meeting we had. He had a great sense of humor. He handled all the questions with ease. Then, shortly thereafter, he was sitting where the Acting President pro tempore is now sitting, as we did the impeachment trial of President Clinton. Again, he had such a good sense of fairness as he worked his way through those very difficult proceedings.

He had a bad back, and he would have to get up once in a while—stand where the Acting President pro tempore is now sitting. When the breaks would be taken, he would go back into one of the rooms back here, and we would all go visit with him—a terrific man. You may not agree with a lot of the direction of his opinions, but they were brilliantly written. He had no judicial experience—zero.

One of my favorite Supreme Court Justices, in recent years, has been Sandra Day O'Connor, not because she is a Republican but because she was a good judge. She had run for public office. She served in the legislature in Arizona. That is why she could identify with many of the problems created by us legislators, and she could work her way through that.

I think Solicitor General Kagan will bring a lot of those same views of these two Republicans to the bench; that is, she has fresh ideas. She has been out in the real world recently. I think she is going to be a terrific addition to the Supreme Court.

Would the Chair now announce the business of the day.

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 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.

Sanders-Dodd modified amendment No. 3738 (to amendment No. 3739), to require the nonpartisan Government Accountability Office to conduct an independent audit of the Board of Governors of the Federal Reserve System that does not interfere with monetary policy, to let the American people know the names of the recipients of over $2,000,000,000,000 in taxpayer assistance from the Federal Reserve System.

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

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

The legislative clerk proceeded to call the roll.

Mr. VITTER. Madam 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.

AMENDMENT NO. 3760 TO AMENDMENT NO. 3739

Mr. VITTER. Madam President, I call up the Vitter amendment which is at the desk.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Louisiana [Mr. VITTER], for himself, Mr. DEMINT, Mr. GRASSLEY, Mr. HATCH, Mr. MCCAIN, Mr. BUNNING, Mr. CRAPO, and Mr. RISCH, proposes an amendment numbered 3760 to amendment No. 3739.

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

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

The amendment is as follows:

(Purpose: To address availability of information concerning the meetings of the Federal Open Market Committee, and for other purposes)

At the end of title XI, add the following:

SEC. 1159. AUDITS AND OVERSIGHT OF THE FEDERAL RESERVE.

Section 714 of title 31, United States Code, is amended—

(1) in subsection (a), by striking "the Office of the Comptroller of the Currency, and the Office of Thrift Supervision." and inserting "and the Office of the Comptroller of the Currency.";

(2) in subsection (b), by striking all after "has consented in writing." and inserting the following: "Audits of the Federal Reserve Board and Federal reserve banks shall not include unreleased transcripts or minutes of meetings of the Board of Governors or of the Federal Open Market Committee. To the extent that an audit deals with individual market actions, records related to

such actions shall only be released by the Comptroller General after 180 days have elapsed following the effective date of such actions.'';

(3) in subsection (c)(1), in the first sentence, by striking ''subsection,'' and inserting ''subsection or in the audits or audit reports referring or relating to the Federal Reserve Board or Reserve Banks,''; and

(4) by adding at the end the following:

''(f) AUDIT AND REPORT OF THE FEDERAL RESERVE SYSTEM.—

''(1) IN GENERAL.—An audit of the Board of Governors of the Federal Reserve System and the Federal reserve banks under subsection (b) shall be completed not later than 12 months after the date of enactment of the Restoring American Financial Stability Act of 2010.

''(2) REPORT.—

''(A) REQUIRED.—A report on the audit referred to in paragraph (1) shall be submitted by the Comptroller General to the Congress before the end of the 90-day period beginning on the date on which such audit is completed and made available to—

''(i) the Speaker of the House of Representatives;

''(ii) the majority and minority leaders of the House of Representatives;

''(iii) the majority and minority leaders of the Senate;

''(iv) the Chairman and Ranking Member of the committee and each subcommittee of jurisdiction in the House of Representatives and the Senate; and

''(v) any other Member of Congress who requests it.

''(B) CONTENTS.—The report under subparagraph (A) shall include a detailed description of the findings and conclusion of the Comptroller General with respect to the audit that is the subject of the report.

''(3) CONSTRUCTION.—Nothing in this subsection shall be construed—

''(A) as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office; or

''(B) to limit the ability of the Government Accountability Office to perform additional audits of the Board of Governors of the Federal Reserve System or of the Federal reserve banks.''.

The ACTING PRESIDENT pro tempore. The Senator controls 20 minutes.

Mr. VITTER. Madam President, I ask that the Chair notify me after 15 minutes has been used.

The ACTING PRESIDENT pro tempore. The Senator will be notified.

Mr. VITTER. Madam President, I have called up Vitter amendment No. 3760, which is verbatim, word for word, the RON PAUL language that was added to the House bill in committee by a strong bipartisan vote.

In doing so, I also ask unanimous consent to add the following Senators as cosponsors: Senators DEMINT, GRASSLEY, HATCH, MCCAIN, BUNNING, CRAPO, and RISCH.

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

Mr. VITTER. Madam President, on the Senate side, I have been a strong cosponsor and supporter of S. 604 and Senator SANDERS' amendment on this bill. I present this different amendment because Senator SANDERS decided to modify his amendment late last week, and I thought there was a continuing need to have this language exactly as it now appears in the House bill, as it was included in the House bill by a strong bipartisan vote in the house committee.

First, let me say I support the Sanders amendment. I will vote for it. It is a very important and useful look in the rearview mirror, if you will, a one-time audit of significant Federal Reserve activity, particularly in 2008 and 2009. I welcome that.

That should not be the end of the matter, and it should not be recognized as all we need because it clearly is not. We need to look in the rearview mirror at those important events. That was a very significant period. But we also need to look forward because these events and these debates and these opportunities for bailouts and other actions absolutely continue. The Vitter amendment addresses that—a look forward as well as that important one-time look back.

If we needed any reason to think we need this ability to continue to look forward and look at the detailed provisions of Fed activity, it is in the news right now—absolutely right now—in terms of the Greek and European economic crisis.

Although Chairman Bernanke assured Congress in recent testimony that ''we have no plans to be involved in any foreign bailouts or anything of that sort,'' very recently, in the last few days, the Fed has announced the opening of significant facilities to central banks in Europe that certainly involve it, at least at the margin, in that activity.

I do not know enough about those recent deals and currency exchange swaps to comment on whether they are a good idea or a bad idea, or to comment a clear conclusion about the extent to which they put U.S. taxpayers at risk. But clearly they are a significant event. Clearly, there is significant action of the Fed. And clearly, they are a perfect and very recent example of why we need to look in detail at what the Fed is doing on an ongoing basis.

With Greece, Portugal, and Spain, all possibly on the cusp of financial crisis, with this significant decision of the Fed, we must go beyond the Sanders amendment. We must look forward and not just one time back to ensure the American people that we all know what our Federal Reserve is doing and exactly why it is doing it.

This Vitter amendment does that. It will bring real reform and accountability to the Federal Reserve. That is essential, given the historic, major actions the Fed has undertaken in the last few years and continues to announce, even as we speak, activities that would not be covered by the Sanders amendment.

There has been a lot of rhetoric about all of the evil and dangerous things my amendment would do at the Fed. Let me directly address and dispel these notions.

First, there has been a lot of suggestion that this will politicize individual monetary policy decisions; that this will have individual Members of Congress bringing undue influence on those decisions. I truly think there are enormous protections in this amendment that will clearly avoid that situation.

Let's start with the clear language of the amendment:

> Nothing in this subsection shall be construed as interference in or dictation of monetary policy to the Federal Reserve System by the Congress or the Government Accountability Office.

It is a very clear, very broad, very strong statement. The amendment goes even farther. The other specific language of the amendment is very careful to ensure the audits that the amendment will require will not include unreleased transcripts or minutes of meetings of the Federal Reserve Board of Governors or of the Federal Open Markets Committee.

In addition to the extent any audit deals with an individual market action, such as a change in interest rates, the audit will only be released 180 days after the action occurs.

If this is an attempt for any Members of Congress, any individuals to control individual decisions, to have a direct impact on an individual decision, such as an interest rate decision, it is a pretty dumb, ineffective way to do it because the audit will not be out for half a year. Clearly, it will have no impact on that decision.

Under these protections, the Federal Reserve will still operate monetary policy independently, but it is reasonable that those actions, after an appropriate lag of time in some cases will be transparent, will be fully understandable and fully open to the American people and to Congress.

Again, I think it is very important to dispel these notions that are flying about that are untrue. I have talked with Chairman Bernanke several times about these proposals. Always, invariably, his stated concern is the opportunity for an audit to try to impact an individual decision, such as an interest rate decision. We have addressed that very directly in the way I explained.

In addition, the GAO cannot review many actions such as discount window lending—direct loans to financial institutions—open market operations and any other transactions made under the direction of the Federal Open Market Committee.

GAO also, under the clear terms of this amendment, cannot look into the Fed's transactions with foreign governments. This, again, is plenty of protection against the concerns annunciated prior to this debate and vote.

What this comes down to is: Do the American people deserve full information about Federal Reserve decisions or is somehow this beyond the capability of Congress and the American people to digest?

In Federal Reserve Board minutes that were only recently released—these minutes go back to 2004—Alan Greenspan said this:

> We run the risk, by laying out the pros and cons of a particular argument, of inducing people to join in on the debate, and in this regard it is possible to lose control of a process that only we fully understand.

It is somewhat amazing to me, but that is a verbatim, direct quote. More than any statistic, more than any other quote, more than any fact, that direct quote is about what this debate and what this amendment is about.

Is this an area of governance that affects all of our daily lives that we should leave purely up to the elites without ever having full transparency and a full opportunity for debate? Alternatively, is this still America, and do Congress and the American people deserve full openness?

Let me read this quote again because it goes to the heart of the issue:

> We run the risk, by laying out the pros and cons of a particular argument, of inducing people to join in on the debate, and in this regard it is possible to lose control of a process that only we fully understand.

If you adopt that offensive, in my opinion, elitist attitude, vote against the Vitter amendment. If you think we should have much greater openness and transparency and the opportunity for a full debate, with all of the protections of the individual, interest rate, and other decisions I have laid out, please vote for the Vitter amendment.

Again, Madam President, I will support the Sanders amendment. It is an important and appropriate one-time look back, one-time look in the rear-view mirror about a very important period of time, particularly 2008–2009 when the Fed was busier and more active with more aggressive policy than ever before. But the opportunity for that aggressive policy is not over. We see that this week, with the Fed participating with European national banks in the crisis in Europe. We need this opportunity on an ongoing basis. We need the Vitter amendment. In addition, we need a full audit, and with all of the protections included, we need that opportunity continuing for full openness and transparency.

Madam President, with that, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Vermont. The Senator controls 20 minutes.

Mr. SANDERS. Madam President, let me begin by thanking my colleague from Louisiana, Senator VITTER, not only for his remarks today but for his excellent work throughout this process. I have enjoyed working with him. What we have tried to do in this whole process is to bring together people who come from very different ideologies to basically make the point that the time is now to end the secrecy at the Fed.

Madam President, I would like to yield myself 15 minutes, if the Chair can let me know when 15 minutes has expired.

The ACTING PRESIDENT pro tempore. The Senator will be so notified.

Mr. SANDERS. Madam President, at a time when the Federal Reserve has been provided the largest taxpayer bailout in the history of the world, to the largest financial institutions in this country—trillion-dollar institutions—without the approval of Congress, without the real knowledge of the American people, the Sanders amendment makes it clear that the Fed can no longer operate forever in the kind of secrecy in which it has operated. Under the Sanders amendment, for the first time the American people will know exactly who received over $2 trillion in zero, or virtually zero, interest loans from the Fed, and they will know the exact terms of those financial arrangements.

Under the Sanders amendment, for the first time, the GAO will be required to conduct a top-to-bottom comprehensive audit of every single emergency action the Fed has undertaken since the financial crisis began. Under the Sanders amendment, for the first time, the GAO will investigate whether there were conflicts of interest surrounding the emergency actions of the Fed.

Madam President, the Fed has been fighting all the way to the U.S. Supreme Court to keep this information secret. Well, this amendment says, in no uncertain terms, this money does not belong to the Fed; it belongs to the American people, and the American people have a right to know where their taxpayer dollars are going. That is not a difficult concept to get one's arms around. The American people have a right to know.

Specifically, the Sanders amendment does two things: First, it requires the Fed to put on its Web site by December 1, 2010, the names of all of the financial institutions, corporations and foreign central banks—let me repeat, foreign central banks—that received trillions of dollars in taxpayer assistance from the Fed since the beginning of the financial bailout period.

Second, the Sanders amendment requires the GAO—the Government Accountability Office—to conduct a top-to-bottom comprehensive audit of all of the emergency actions the Fed has taken since the beginning of the financial crisis, with a particular focus on all of the potential conflicts of interest within these secret deals. And that, Madam President, is an extremely important point which, by the way, was not in my original amendment.

The fight for a GAO audit of the Fed and to require more transparency has been a long and arduous struggle. There are many people to thank for being at the point we are today. Partisan politics aside, this has been a joint effort on the part of some of the most progressive Members of Congress and some of the most conservative, and some of the most progressive grass roots organizations and some of the most conservative.

I specifically want to thank, in the Senate, Majority Leader REID, Majority Whip DURBIN, Senators DORGAN, FEINGOLD, BOXER, and LEAHY and many others for their leadership on this issue on my side of the aisle, and to thank Senators DEMINT, VITTER, BROWNBACK, MCCAIN, GRASSLEY, and others on the other side of the aisle.

Last week, a number of Senators—Democrats and Republicans—indicated to me they were uncomfortable with my original amendment, which they believed would have allowed Congress to be involved in the day-to-day monetary operations of the Fed. That was never my intention, and I still do not believe my original amendment would have done that. Nonetheless, that is what a number of Senators believed and were concerned about and they came to me about. The chairman of the Banking Committee, Senator DODD, indicated to me if we could clarify this issue, he would not only be supportive of this amendment, but he would cosponsor it. That is exactly what he did, and I very much appreciate his support.

Let me just very briefly speak to what the principles of this amendment are. No. 1, the Sanders amendment, in terms of transparency, is clear we need to make sure the Federal Reserve releases the names of every single financial institution, corporation, and foreign central bank the Fed provided over $2 trillion in taxpayer assistance to since the financial crisis started and what the exact details of those arrangements were. This information, as a result of this amendment, will be on the Fed's Web site on December 1, 2010, and every single American who has a computer will be able to access that information. That is a major step forward.

Secondly, in terms of the audit, I have always believed the main purpose of this audit was for the GAO to conduct a top-to-bottom comprehensive review of every single emergency action the Fed has undertaken since the start of the financial crisis. That is exactly what this amendment does.

In addition, let me be clear, the modified amendment—the amendment I am offering today—is stronger than my original amendment on one very important point, a point I think millions of Americans are concerned about; that is, it requires the GAO to investigate whether there were conflicts of interest in the establishment of the emergency lending programs at the Fed.

My original amendment would have allowed the GAO to look into conflicts of interest at the Fed but did not require it. This amendment requires it. We are very specific about that.

For example, I want to know—and I think the American people want to know—why Lloyd Blankfein, the CEO of Goldman Sachs, attended a meeting at the New York Fed when the Federal Government decided to bail out AIG to the eventual tune of $182 billion, allowing Goldman Sachs to pocket $13 billion of that money. My original amendment would have allowed the GAO to look at this. The new amendment makes it clear this kind of conflict of interest must be looked into by the GAO.

Further, I want to know—and I think the American people want to know—why the head of the New York Fed, Stephen Friedman, was allowed to serve on the board of directors at Goldman Sachs and was allowed to purchase over 37,000 shares of Goldman stock at the same time the New York Fed was approving Goldman's application to become a bank holding company. My original amendment would have allowed the GAO to look into this. The new Sanders amendment requires the Fed to investigate whether conflicts of interest existed in these types of financial deals.

Some 35 members of the Fed's Board of Directors are executives at banks which received over $120 billion in TARP money. I want to know—and I think the American people want to know—how much these financial institutions received from the Fed and if this represents a conflict of interest. My original amendment would have allowed the GAO to look at this. The new Sanders amendment requires the GAO to take a look at those potential conflicts of interest.

What is important to point out is, in terms of transparency, I am not the only person—other Members of the Senate are not the only people—who is demanding that the Fed tell us to whom they lent money. I would point out that Bloomberg News has gone to court and, in fact, has won two Federal court decisions against the Fed in which the courts have said the Fed has to release that information. But the Fed persists in saying no. They want to keep that information secret.

So that is where we are today. We are on the verge of lifting the veil of secrecy at perhaps the most important government agency in the United States—an agency which has control of and expends trillions of dollars. They do it behind closed doors, and they do it in ways the American people know very little about. So I ask for strong support for the Sanders amendment so we can go forward and break this veil of secrecy.

With that, Madam President, I reserve the remainder of my time.

Mr. DODD. Madam President, how much time remains?

The ACTING PRESIDENT pro tempore. The Senator from Connecticut controls 20 minutes, the Senator from Alabama controls 20 minutes, the Senator from Vermont has 8½ minutes, and the Senator from Louisiana, 9 minutes.

Mr. DODD. Madam President, let me ask how much time my friend needs?

Mr. GREGG. I would ask for 5 minutes.

Mr. DODD. I yield the Senator from New Hampshire at least 5 minutes, unless he needs more.

The ACTING PRESIDENT pro tempore. The Senator from New Hampshire.

Mr. GREGG. Madam President, first off, at this point I congratulate the Senator from Vermont and express my appreciation for his very constructive approach to this issue. I had very serious reservations regarding his original amendment, but he has worked with Members of this side of the aisle, the chairman of the committee, and members of the administration and the Fed and has come up with an extremely responsible amendment.

The Senator's amendment gets to the issues which he is concerned about, which are totally legitimate; that is, the question of transparency and making sure, to the fullest extent possible, the American people know what is happening with this very significant agency that impacts our lives but which we know little about—a lot of Americans don't—and that is the Federal Reserve.

I also wish to congratulate Chairman Bernanke—he and his staff—for stepping forward and aggressively pursuing a resolution to this issue in a manner which I think will be very positive for both sides.

So I intend to support the amendment of the Senator from Vermont, as amended, and appreciate his offering it and appreciate his responsible effort. I do have, however, deep and severe reservations and strongly oppose the amendment of the Senator from Louisiana. The issue here isn't transparency any longer with the amendment of the Senator from Louisiana. The issue is whether we have a Federal Reserve which can function and can pursue its primary purpose, which is maintaining the integrity of the currency of the United States.

When the Federal Reserve was created back in 1917, there was a huge debate—a huge debate—raging in this Nation, and had been raging since the great depressions of 1897 and 1907—about how to manage the currency of this country. The central figure in that debate was William Jennings Bryan, a man of immense proportions in our history. He was a populist in the extreme, and he believed genuinely that there should be a monetary policy in this country which allowed for free money to be produced, essentially. His Cross of Gold Speech was, of course, historic. His view was, basically, those who were in control of the government—public elected officials—should have control over the currency. But what had been learned over time was if you turn control of the currency over to elected officials, the currency becomes at risk because there is a natural tendency by elected bodies to want to produce money arbitrarily to take care of spending which they deem to be in the public interest.

Thanks to the leadership at that time of a number of thoughtful people, including people such as Woodrow Wilson, the decision was made to create a separate entity called the Federal Reserve, which would manage the currency of the United States and decide how much money was printed. The printing presses would be taken away from elected officials.

This decision has probably been one of the best decisions we ever made as a nation in order to determine a strong fiscal future and a strong economy because it has allowed us to have a currency which has basically been protected from the winds of the politics of the day. That is absolutely critical. It is as important today as it was when the Federal Reserve was created, if not more important today.

We have seen a world where there is a tremendous amount of pressure on the currencies of almost every nation, certainly every developed nation with the exception of a few. That pressure inevitably leads to populist outrage on occasion or to popular decisions which can request that the currency be devalued in order to produce what some people see as a better lifestyle or in order to address concerns a nation may have. But you cannot do that at the whim of elected officials. It is absolutely critical that the currency of the Nation be protected from the day-to-day activities of politics.

We have created this Federal Reserve System which accomplishes that. The essence of that system is the Open Market Committee, which decides essentially how much money there is going to be in circulation in this country. We have always believed that system should have integrity, be kept separate from the political process; that Members of the Congress should not have the ability, either directly or indirectly, to influence the decision of the printing of dollars in this Nation. It is a good decision and we should not abandon that course of action.

Yet the Vitter amendment, couched in all sorts of——

The PRESIDING OFFICER (Mr. UDALL of New Mexico). The Senator from New Hampshire has used the 5 minutes he was yielded.

Mr. GREGG. I ask for 4 minutes out of the time of Senator SHELBY.

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

Mr. GREGG. The amendment offered by Senator VITTER unfortunately has, as its essence, the disassembling of this independence. It would give the Congress the ability, through the GAO—and because the GAO is an arm of the Congress, our accounting arm—to go in and investigate what happens with the Open Market Committee. That is clearly going to create consequences which would be inappropriate in the decision-making process of the Federal Reserve. It would influence their ability to make decisions in the sense they would be concerned about Congress coming in and investigating them. It would open activities which, if they are not done in some level of confidence, inevitably end up disrupting the markets. So it is absolutely critical that the Congress not be allowed to go into the Open Market Committee and audit that part of the Federal Reserve activities—absolutely critical if we are going to maintain the integrity of the dollar.

Remember, this is about Main Street. Whether that dollar you take on Main

Street to buy clothing or food or a car—whether that dollar has the value you think it has depends entirely on whether there is confidence it is not going to be inflated arbitrarily. If the political process starts to influence the decisions as to how much money is printed in this country and therefore affects the inflationary value of the dollar, you will see your dollars devalued as you try to buy items on Main Street. The effect of that will be devastating on your ability as an American citizen to have confidence in the dollars which you earn and what they are going to buy and what they are going to mean when you save them—which is even more important.

We cannot have a system which allows Congress to influence the decisions in this critical area. All the rest of the activities the Federal Reserve undertakes should be open, should be audited by the Congress, and should be available for public inspection on a regular basis. That is essentially what the amendment of Senator SANDERS does. There is already a lot of audit activity at the Fed, but what it does is expand that and make it more transparent and more available to the American people. But in this one area which Congress has specifically by law exempted from review for the very logical and appropriate reason that we do not want the politics of the day to influence the decision as to the value of our currency, in this one area we need to keep the exception and give the Fed that type of protection.

I strongly oppose the Vitter amendment. I hope those who are concerned about maintaining the integrity of our currency will also oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. I yield myself 10 minutes on my time, if I may, and reserve 5, if the Chair will let me know when that time has expired.

The PRESIDING OFFICER. The Chair will do so.

Mr. DODD. I thank my friend and colleague from New Hampshire. He is always thoughtful on these issues. I appreciate the history lesson as well. It is always important that Members understand the genesis and history of necessary decisions, so it is an important contribution this morning to what we are trying to achieve. Also, let me say how much I appreciate the efforts of the Senator from Vermont. Occasionally around here you get to make a historic contribution. I don't want to engage in hyperbole, but this is a historic moment the Senator from Vermont has provided us, to be able to do something we have talked about. I want to tell my colleague from Vermont not only do I think we are going to achieve what he wants with his amendment, but we just had a meeting with the Chairman of the Federal Reserve to kind of brief us on these events in Europe over the weekend, and the Federal Reserve, without legislation but clearly under the influence of this proposed legislation, is going to put up on its Web site as soon as possible the contracts between the Fed and other central banks that occurred over the past weekend.

It has also committed the Fed will report weekly on the activity of each of the swaps accounts by the central banks—not in the aggregate, each one of them. The legislation is going to do a lot, but the Senator has already had an influence on the conduct of the Fed in terms of the transparency issues.

I appreciate very much the efforts of Senator SANDERS. He is not new to the issue. He has raised this repeatedly since he became a Member of this body. I also associate myself with the remarks of the Senator from New Hampshire regarding the Vitter amendment. Again, the central question in many ways is exactly as he has described it, and that is the independence of the central bank, the most important central bank in the world, to be able to operate devoid of the kind of political influences that could ultimately change that Federal Reserve Board from making the kind of decisions that are going to protect the integrity of our currency.

The Open Market Committee's functioning absolutely is critical. So this is a well-crafted proposal, in my view, because it goes to the heart of the issue of transparency, including the requirements now mandated by the Sanders amendment. The previous incarnation of this amendment was a request. I think all of us know where requests end up if there is no will on the other side to engage them. But this now mandates, in fact—we could have potential conflict of interest examined as to when these decisions are made.

I point out that our bill today includes language, if adopted, that will change how the New York Fed president is chosen. Presently he is chosen by the very institutions that office is designed to regulate. In a sense, we change all of that because that on its face seems to be an inherent conflict. When you get to choose your regulator—one of the complaints we have had, legitimately, about regulatory arbitrage is that institutions picked their regulator of least resistance and that contributed to some of the problems we have run into. Under the present construct, without the changes included in our bill, of course that goes on. Imagine, if you can sit around and choose your own regulator if you are lending institutions, financial institutions. That presently is what happens with regional banks. So the very banks that are the subject of the Federal regulation decide who the regulator will be. Our bill changes that as well, and that goes to the heart of exactly what the Senator from Vermont is talking about.

I urge my colleagues to give strong support to the Sanders amendment. I am a cosponsor. I don't cosponsor many amendments for the obvious reason we have a lot of them and I realize some I am supportive of, maybe not as strongly as others. I am a strong supporter of this amendment, and I want my name attached to it, and I appreciate the efforts of my colleague in putting this forward.

I am as strongly in opposition to the Vitter amendment because it undermines, in effect, what the Sanders amendment accomplishes. That would be a tragedy, in my view. The fact is we are going to do something that has been needed to be done for years, and that is to get the transparency of what occurs at the Federal Reserve, but not engaging in the kind of damage that could occur—particularly at this moment.

We all understand. I think we have made the case over and over again over many days. We are no longer talking about a financial system that is in jeopardy because of what happens in terms of mismanagement of major financial institutions. We now know that events thousands of miles away from our shores, in nation states that have no direct bearing, necessarily, or are directly affected by decisions we make here, can cause the kind of disruptions, economically, around the world. It is that kind of world we live in.

I remember a few years ago a very small exchange, relatively small exchange in Shanghai, China, had a decline of about 12 percent one morning. That exchange represented about 5 percent of the volume of the New York Stock Exchange in Shanghai. Yet that action in that relatively small exchange caused, within a matter of hours, all over the globe exchanges to react to it. My point simply being, without going into the details of what occurred there, events that occur in one part of the world can have a huge implication here as well.

At this very important moment, to undermine the independence of the Federal Reserve with the Vitter amendment would do great damage to our country. I urge my colleagues to be supportive of the Sanders amendment and then join with Senator GREGG and myself and others in our opposition to the Vitter amendment because it undercuts exactly what, in a sense, we are trying to achieve here with this legislation.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. I ask to speak——

The PRESIDING OFFICER. Who yields time?

Mr. DEMINT. I ask to speak under Senator VITTER's time.

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

Mr. DEMINT. Mr. President, there are few things more important to Americans than our money. It represents our life's work, our savings, our investment. When our Founders put this country and the Constitution together, they gave the Congress the responsibility to protect our currency and the value of our money. This is a responsibility that decades ago the Congress delegated to the Federal Reserve, to operate as an independent institution, responsible for protecting our monetary system as well as overseeing employment in our country.

Congress has not paid much attention to what the Federal Reserve has done. In fact, we have little idea now what they are doing. We do know they are doing many things now that they didn't do even a few years before—trillions of dollars buying toxic assets from various financial institutions. We know they are doing business all over the world, lending money with international banks. But we don't know exactly what they are doing, why they are doing it, or how they are doing it.

We don't know if a lot of these activities could eventually bring down our financial system. We need to be concerned because it is our responsibility as a Congress and if we allow our currency to be undermined anywhere in the world, it is detrimental to every American family, everything we worked for, everything we have saved.

We cannot pass this off. This Congress has established other financial institutions such as Fannie Mae and Freddie Mac to supposedly facilitate the mortgage industry and make it easier for people to buy homes. We were told there was no problem with subprime lending and all the things Fannie Mae and Freddie Mac were involved with. But as a Congress we did not do our job overseeing, asking enough questions. Then when Fannie Mae and Freddie Mac created this huge housing bubble and brought our economy to its knees, millions of Americans lost much of what they had worked for and saved.

But what happened with Fannie Mae and Freddie Mac is small compared to what could happen if the Federal Reserve did something to undermine the confidence in the dollar worldwide.

Congress should not be managing our monetary system. I do not think we can do it in the current political structure. But it is our job to provide accountability and transparency to what is going on at the Federal Reserve.

Last week, I spoke in support of the Sanders amendment. I still plan to support it today, but that amendment has been changed. It narrows the scope of a complete audit. It really cannot be called a complete audit anymore. It is just disclosure on various aspects of what the Federal Reserve does. It does not now include what they would refer to now as monetary policy. My understanding was, that is pretty much what they did at the Federal Reserve. Cutting that takes out a big part of what we need to know about what they are doing. It would block us from finding out what the Federal Reserve is doing with banks all around the world. It would block us from finding out a lot of things that could give us an indication of whether the Federal Reserve is putting our monetary and financial systems at risk.

I think it is important, at least at one point in time, for us to find out what the Federal Reserve is doing and disclose it to the American people in a way that they will have confidence that what is happening with the Federal Reserve and with our currency is going to create a stable currency out into the future.

Senator VITTER offered the original amendment before it was changed, the same amendment that was passed in the House by an overwhelming majority which will include all aspects of the Federal Reserve—not in real time, but there will be a delay so that we can't meddle in what they are doing. But it opens a full audit of the Federal Reserve so that this Congress can make good decisions about any needed reforms and certainly keeping some accountability over the Federal Reserve.

It makes absolutely no sense to create really the most powerful agency in the world over the Reserve currency for the world and for there to be no accountability over what they are doing. We know they think we are not smart enough to understand what they are doing, and we may not be. But based on what they have told us in the past, they are not necessarily as smart as they think they are either, because only a few months before Fannie Mae collapsed, the Federal Reserve told us there was no problem. Now they are telling us there is no problem and that we don't need to look at what they are doing.

I think it is important that we have full disclosure and accountability and transparency at the Federal Reserve. It is important that the American people trust those who are managing their currency, and right now they don't. A full audit would help restore that trust and help Congress do its job to oversee the Federal Reserve. The Federal Reserve can maintain its independence, but it doesn't have to be independent in secret because if they are operating secretly, Congress is not doing its job.

I encourage my colleagues to support the Sanders amendment but also the Vitter amendment so that we will have a full audit and know for the first time what our Federal Reserve is doing with our money.

I reserve the remainder of Senator VITTER's time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SHELBY. I rise today to support the Sanders amendment to bring transparency to the Federal Reserve. I believe this amendment is needed because the Federal Reserve has abused its independence. The Federal Reserve has repeatedly assumed and exercised vast fiscal powers under the guise of ''monetary policy.'' It has sought to escape accountability for these actions by claiming that its independence places it beyond the scope of congressional oversight. To allow any agency, including the Federal Reserve, to exercise the immense powers now wielded by the Fed with so little accountability is simply incompatible with our constitutional system of government.

Congress granted the Federal Reserve independence with respect to monetary policy on grounds that ''monetary policy'' was a technical, nonpolitical task that did not put taxpayers at risk. Unfortunately, the Fed has failed to stay within the limits envisioned by Congress. Over the past 3 years, the Federal Reserve's balance sheet has exploded to more than $2.3 trillion, with much of the increase related to actions that had little to do with monetary policy and more to do with bailouts, fiscal policy, and plain politics.

Although the Fed likes to pretend it is independent and removed from politics, the reality here is that the Board of Governors of the Federal Reserve is one of the biggest political players in town.

Ironically, while the Fed is fighting this amendment, the Fed remains silent about other measures that would compromise its independence. Why? The answer is politics. When it serves its politics, the Fed is happy to selectively sacrifice its independence. For example, the Dodd bill compromises the Fed's independence by having the Fed directly fund the Democrats' new consumer bureaucracy. This establishes a dangerous precedent. Anytime Congress needs a funding source, it can now go outside the budget process and have the Fed print money. Yet the Fed has remained remarkably quiet. Why? Again, politics. The Fed's silence should come as no surprise given the close political ties between the Board of Governors of the Federal Reserve and the Obama administration. The Board of Governors has clearly decided to help the Obama administration advance its legislative goals.

The Fed cannot have its cake and eat it too. If the Fed wants to be independent, it should defend its independence consistently but otherwise should stay out of politics. On the other hand, if the Federal Reserve wants to be political, it should not expect Congress to treat it as a so-called independent, nor should the Fed expect that its nonmonetary policy actions are exempt from congressional oversight. These activities, even when conducted by FOMC, are fiscal or regulatory actions that involve taxpayer dollars and policy judgments. They are no different from other policy decisions made by the executive branch.

Accordingly, I believe Congress has a constitutional duty to oversee these activities. Unfortunately, the Fed often acts as if Congress should be kept in the dark. It uses this independence as a shield to hide its actions from congressional oversight, including its bailouts of AIG and Bear Sterns. No agency should have the fiscal and regulatory powers exercised by the Fed and not think it has to be fully accountable to Congress. It should.

It is my hope this amendment will be the first step in moving the Fed back to its more limited and traditional role in our regulatory and constitutional systems.

The PRESIDING OFFICER. Who yields time?

The Senator from Connecticut.

Mr. DODD. Mr. President, I would like to inquire how much time remains?

The PRESIDING OFFICER. The Senator from Connecticut controls 13 minutes; the Senator from Alabama, 4 minutes; the Senator from Louisiana, 3 minutes; the Senator from Vermont, 8 minutes.

Mr. DODD. Well, I am kind of done. I don't know if my colleague from Vermont wants to add any words to all of this. I don't even know whether the leaders want to be heard on this amendment or whether other Members want to be heard. So I guess what I will do is propose that there is an absence of a quorum and that the time be equally extracted from all Members who control time.

Is there a fixed time for the vote?

The PRESIDING OFFICER. The vote will occur at the expiration or the yielding back of the time.

Mr. DODD. I suggest the absence of a quorum and ask unanimous consent that the time be equally charged to all three of the Members who control the time at this point.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SHELBY. 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. SHELBY. Mr. President, I ask unanimous consent that after the McCain amendment is disposed of, the next amendment in order be the Corker amendment—the next Republican amendment—dealing with underwriting.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Reserving the right to object, just so we are clear, when we dispose of the McCain amendment and related amendments to it, there may be a side-by-side, the next Republican amendment—there will be a Democratic amendment after the McCain amendment. Then the next amendment after that—Republican amendment—will be the Corker amendment.

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

Who yields time?

The Senator from Vermont is recognized.

Mr. CORKER. I have an inquiry.

Mr. SANDERS. I yield to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. CORKER. Mr. President, as far as other amendments, I have an inquiry. As far as other amendments, I have a number of what I would call surgical amendments, some of which may be—I just have an inquiry as to other types of amendments. I know we are going in order, Republican and Democrat. I just thought we might talk for a second. I have a number of surgical amendments that improve the bill. None of them are messaging amendments. I actually think some of them are going to be taken in a managers' amendment.

But I would just inquire of the manager of the bill what his thinking is as it relates to sort of time limits and how we might move through some of these other amendments that are here strictly to try to improve the bill and may have strong bipartisan support.

The PRESIDING Officer. The Senator from Connecticut.

Mr. DODD. Mr. President, I have yet to meet a Member who didn't think an amendment they offered was going to improve the bill. We can't make that the criteria.

First, I appreciate the Senator raising the issue because it is an important question. I have raised with my colleague and the former chairman, Senator SHELBY, a package of amendments, technical or others, where we think there is agreement, although he will have to take a look at them to make that determination, not as a final managers' amendment but to try and clear out those amendments we think can be adopted without taking up time for votes on individual amendments. I invite any Member who has amendments, including my colleague from Tennessee, to give us the amendments he or she has or to show them to Senator SHELBY, and we will try to accept them where we can.

If there is some problem we can't resolve, then we need to provide the time between now and the conclusion of the bill to consider them. I will do my best to see that happens.

Let me take advantage of the question to make a plea to my colleagues. Obviously, there is not an unlimited amount of time to debate this bill. We have other matters we are all painfully aware of that have to come up before we adjourn for the year. My hope is Members will provide the time and come forward and we will get short time agreements for some amendments, maybe a bit longer for others that are a bit more substantive and require more debate. But we need to move on this. We have submitted, several days ago, a package of what I thought would qualify as a managers' amendment. We need to get some answers on that so we can try to accommodate provisions to this bill that are good contributions offered by Republicans and Democrats—in some cases both—so we can actually add to the product of this legislation. I appreciate my colleague's suggestion. If we can see them, we will try to agree to all of them. If there is any problem, we will let him know and then thin out that list so we can get to them.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. SANDERS. Mr. President, let me summarize again what the Sanders amendment does. Let me take my colleagues back to a meeting of the Budget Committee, on which I serve, about a year ago. Chairman Bernanke came before that committee. I asked him: Will you tell the committee, me, and the American people which large financial institutions received trillions of dollars of zero or near zero interest loans? I thought that was a reasonable question.

Mr. Bernanke said: No, I will not do that. I will not release that information.

On that day, I introduced legislation to compel him to release the information. This amendment, if passed, on December 1, 2010, would, in fact, contain that information. It is a major step forward.

Secondly, many Americans are beginning to catch on—and some Senators have referred to that today—to the immense power of the Fed. People are demanding transparency at the Fed. People want to know what happens behind closed doors when some of the leaders of the largest financial institutions sit down with the Fed and, lo and behold, programs are developed which benefit those very same large financial institutions. Wouldn't it be nice, wouldn't it be great if small businesses in Vermont could end up with zero interest loans? They can't. But somehow or another, some of the largest financial institutions in this country manage to do that, and we don't know how this process goes on.

Passage of the Sanders amendment is a step forward. I congratulate all those people from both political parties, with very different political ideologies, for coming forward, for pushing this issue forward. This is not the end. This is a beginning. As Senator DODD said a moment ago, this is historic. We are beginning to lift the veil of secrecy on what is perhaps the most important agency in the government.

I urge passage of the Sanders amendment.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I stand to join with a bipartisan group of colleagues supporting the Sanders amendment and also in support of the Vitter side-by-side amendment. These are not mutually exclusive alternatives. Both Senator SANDERS and myself and many others will strongly support both. I urge all my colleagues, Democrats and Republicans, to do the same.

Particularly since the financial crisis, the American people have been demanding several things. One of them clearly has been openness and transparency about U.S. economic policy, including at the Federal Reserve. That has been a major theme, particularly since the financial crisis. That has been a clear demand of the American people, certainly of Louisianans, particularly since the financial crisis.

Most of us have voted and spoken in strong support of that. If we truly want to make it happen and if we truly want to preserve that record, we need to vote for the Sanders amendment and the Vitter amendment today to get that done.

If we want to continue to support the same push as in the stand-alone Sanders Senate bill, we need to vote for both amendments. If Members want to continue to support their position, if they voted for the Sanders budget amendment a few months ago—and a strong majority of this body did—they need to vote for both amendments. If they want to support the position of the House which, in a bipartisan way, supported exactly the same language as contained in my amendment through an amendment in the Banking Committee, a strong bipartisan vote, they need to support both amendments. Supporting one, walking on the other, is not good enough and will surely be recognized as not good enough.

I urge all my colleagues to support both amendments, to have full openness and accountability and transparency, with all the protections included against politicizing individual Fed decisions.

In many ways, I think it comes down to this one quote by Alan Greenspan from 2004:

> We run the risk, by laying out the pros and cons of a particular argument, of inducing people to join in on the debate, and in this regard, it is possible to lose control of a process that only we fully understand.

Imagine, Congress, the American people joining in on the debate. God forbid. Imagine the moneyed elites losing complete control of the process. God forbid. If Members share that Alan Greenspan view of democracy, vote against my amendment. But if they share a very different view, which I believe is embodied in this institution and our Constitution, please support both the Sanders and Vitter amendments.

I yield my time.

The PRESIDING OFFICER. Who yields time? The Senator from Connecticut.

Mr. DODD. Mr. President, I believe there is no more time. Has the time expired for the Senator from Louisiana?

The PRESIDING OFFICER. The Senator from Louisiana has consumed his time. The Senator from Alabama has 4½ minutes.

Mr. DODD. We are prepared to yield back time on our side. I gather the Senator from Alabama is prepared to yield back his time.

I ask for the yeas and nays on the Sanders amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

Mr. DODD. I yield back all our time.

The PRESIDING OFFICER. All time is yielded back.

The question is on agreeing to amendment No. 3738, as modified.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from New Mexico (Mr. BINGAMAN) and the Senator from West Virginia (Mr. BYRD) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. BINGAMAN) would vote ''yea.''

Mr. KYL. The following Senators are necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Alaska (Ms. MURKOWSKI).

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

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

[Rollcall Vote No. 137 Leg.]

YEAS—96

Akaka	Ensign	McConnell
Alexander	Enzi	Menendez
Barrasso	Feingold	Merkley
Baucus	Feinstein	Mikulski
Bayh	Franken	Murray
Begich	Gillibrand	Nelson (NE)
Bennet	Graham	Nelson (FL)
Bennett	Grassley	Pryor
Bond	Gregg	Reed
Boxer	Hagan	Reid
Brown (MA)	Harkin	Risch
Brown (OH)	Hatch	Roberts
Brownback	Hutchison	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

NOT VOTING—4

Bingaman	Inhofe
Byrd	Murkowski

The amendment (No. 3738), as modified, was agreed to.

VOTE ON AMENDMENT NO. 3760

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to amendment No. 3760.

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

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

The clerk will call the roll.

The legislative clerk called the roll.

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

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

The result was announced—yeas 37, nays 62, as follows:

[Rollcall Vote No. 138 Leg.]

YEAS—37

Barrasso	Ensign	Risch
Brownback	Enzi	Roberts
Bunning	Feingold	Sanders
Burr	Graham	Sessions
Cantwell	Grassley	Shelby
Chambliss	Hatch	Snowe
Coburn	Hutchison	Thune
Cochran	Inhofe	Vitter
Collins	Isakson	Webb
Cornyn	LeMieux	Wicker
Crapo	Lincoln	Wyden
DeMint	McCain	
Dorgan	Murkowski	

NAYS—62

Akaka	Franken	Menendez
Alexander	Gillibrand	Merkley
Baucus	Gregg	Mikulski
Bayh	Hagan	Murray
Begich	Harkin	Nelson (NE)
Bennet	Inouye	Nelson (FL)
Bennett	Johanns	Pryor
Bingaman	Johnson	Reed
Bond	Kaufman	Reid
Boxer	Kerry	Rockefeller
Brown (MA)	Klobuchar	Schumer
Brown (OH)	Kohl	Shaheen
Burris	Kyl	Specter
Cardin	Landrieu	Stabenow
Carper	Lautenberg	Tester
Casey	Leahy	Udall (CO)
Conrad	Levin	Udall (NM)
Corker	Lieberman	Voinovich
Dodd	Lugar	Warner
Durbin	McCaskill	Whitehouse
Feinstein	McConnell	

NOT VOTING—1

Byrd

The amendment (No. 3760) was rejected.

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

The motion to lay on the table was agreed to.

Mr. INHOFE. Mr. President, I support Senator SANDERS' amendment No. 3738 regarding Federal Reserve transparency. As a cosponsor of S. 604, the Federal Reserve Sunshine Act of 2009, my support for these efforts is clear. American taxpayers have a right to know how, where, and when their money is spent or put at risk. For too long, they have put up with secrecy and arrogance. That has to stop, and that is why I would have voted for Senator SANDERS' amendment had I been able to do so and why I voted for Senator VITTER's amendment when I arrived in Washington. My travel was detained due to severe weather and tornadoes affecting Oklahoma yesterday.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. 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, before we recess, let me say that the next amendment up is the McCain amendment, and while we don't have an agreement yet, I am hopeful one will be agreed to right after we come back after the respective caucus luncheons at 2:15 p.m.

I am urging Members, again, we are trying to line up these amendments so we can have an afternoon full of votes—a short debate on amendments and then votes. I don't want to hear later people telling me, ''I didn't have enough time,'' when in fact we are trying to provide time for people. You can't have it both ways. You can't say you needed more time and then not be here or get the time agreements to allow us to move forward.

With that, Mr. President, I yield the floor.

RECESS

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

Thereupon, the Senate, at 12:33 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENT NO. 3839 TO AMENDMENT NO. 3739

Mr. MCCAIN. Mr. President, I call up amendment No. 3839 and ask for its immediate consideration and ask to set aside pending amendments.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAPO, Mr. CORKER, Mr. BURR, Mrs. HUTCHISON, and Mr. ROBERTS, proposes an amendment numbered 3839 to amendment No. 3739.

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

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

The amendment is as follows:

(The text of the amendment is printed in the RECORD of May 5, 2010, under ''Text of Amendments.'')

Mr. MCCAIN. Mr. President, before we continue, I know the distinguished chairman of the Banking Committee and the manager of the bill want us to move forward. I understand that. As we speak, I am compiling a list of those who want to speak on the amendment on this side. I assure him we will try to get a time agreement completed as soon as possible. I ask my colleagues on this side of the aisle who want to speak on this amendment to call the cloakroom so we can get that done.

Mr. President, I ask unanimous consent that Senators BURR, HUTCHISON, and ROBERTS be added as cosponsors of this amendment.

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

Mr. MCCAIN. Mr. President, I apologize to my colleagues for giving them false information a couple of days ago. It is not $125.9 billion that we are now pouring into Fannie and Freddie; it is up to $145 billion that is now being poured in—$145 billion. I remind my colleagues again that last Christmas Eve at 7 p.m. was when the Treasury Department decided to lift the cap, which had been at $400 billion. It is now up—$145 billion. Here we are addressing financial regulatory reform and not looking at $5 trillion of toxic assets that have already spent $145 billion off budget. It is off budget. Incredible.

My distinguished friend from Connecticut pointed out yesterday—he says I want a little revisionist history. He says the House financial committee passed bipartisan legislation. It stalled in the committee over here despite the support for it. The Republican-controlled committee then passed a bill and never filed it, never brought it up for a vote here on the floor of the Senate in 2005. That was my friend Senator DODD's statement yesterday.

The fact is—a little revisionist history—on April 1, 2004, the Senate Banking Committee passed the bill, the Federal Housing Enterprise Regulatory Reform Act. All 12 Republicans voted for it. All Democrats, including the distinguished chairman, voted against it, according to the RECORD. So neither bill was taken on the floor because, as we know, we don't move forward with legislation if it is blocked by the other side.

Then Senator DODD went on to say: I became chairman of the Banking Committee in 2007. We arrived at 2008. We had a significant number of hearings. In the summer of 2008, the Banking Committee passed a comprehensive bill—et cetera, et cetera. The Housing and Economic Recovery Act was finally enacted on July 30, 2008. Just 39 days later, Fannie Mae and Freddie Mac were placed into conservatorship.

I remind Senator DODD that back in 2006, there was a group of us, in response to an inspector general's report, who said we need to fix it and fix it now, and that was blocked by the other side.

Senator DODD said: If you think the market took a plunge last Thursday, adopt the McCain amendment. It is a reckless amendment.

What is reckless is the status quo. What is reckless is to totally ignore $5 trillion in toxic assets, already $145 billion of the taxpayers' money being spent. It is reckless for us to go to the American people and say we are fixing the problem that caused the financial meltdown and yet we are ignoring Fannie and Freddie. We are ignoring the trillions of dollars of toxic assets. And don't worry, we will address it later on. That is what the distinguished chairman is going to say—we will address this later on. Later on? Later on? When we have this already done? And it is not on budget. Remarkable.

What the amendment says is that the conservatorship has to end in 24 months. We will give them 2 years to figure all this out. It is reckless, in my view, to say we are not addressing these trillions of dollars in toxic assets, the hemorrhaging of $145 billion already of taxpayers' dollars, on which there is no expert who believes we will ever see a return.

Finally, I would like to quote the Wall Street Journal editorial of this morning that says, ''$145 Billion and Counting. Fannie and Freddie lose it all for you.''

The editorial says:

These efforts to support the Obama anti-foreclosure program resulted in a doubling of loan modifications compared to the previous—

Let me start from the beginning.

Fannie Mae yesterday announced its 11th consecutive quarterly loss—$11.5 billion—and asked for another $8.4 billion in taxpayer assistance.

They lost that. They are asking for $8.4 billion. That puts us well over $150 billion.

Fannie Mae is the Cal Ripken of bad real-estate deals, reliably pouring taxpayer money into the housing market. Granted, Fannie faces tough competition from its toxic twin, Freddie Mac, which last week announced its own request of another $10.6 billion from taxpayers.

Once the checks from the Treasury clear, Fan and Fred will have consumed a combined $145 billion in taxpayer cash, and the end is nowhere in sight. Both companies warned of further losses triggering more government assistance, which is now unlimited after a 2009 Treasury decision.

The losses are unlimited because the companies are now run by the government not to make money, by deliberately subsidizing housing. In yesterday's press release, CEO Mike Williams didn't even pretend that he's running a profit-making business. ''In the first quarter, we continued to serve as a leading source of liquidity to the mortgage market, and we made solid progress in our ongoing effort to keep people in their homes,'' he said. These efforts to support the Obama anti-foreclosure program resulted in a doubling of loan modifications compared to the previous quarter.

Ramping up modifications makes perfect sense in the upside-down world of Fannie Mae. The company also announced that most of the loans it modified in the first three quarters of 2009 had gone delinquent again within six months.

Does anyone get that? Most of the loans that were modified—at the cost of $100-and-some billion of taxpayers money—have gone under again, have gone delinquent again within 6 months.

The Wall Street Journal goes on:

Talk about an exciting business opportunity. In case anyone still hasn't gotten the joke, the company also clarified yesterday that its directors ''are not obligated to consider the interests of the company'' unless the government tells them to do so.

The real joke is that the Obama Administration and Senator Chris Dodd have collaborated on a financial regulatory reform bill that includes no reform of Fan or Fred. Senators should rectify this embarrassment as early as today by voting for John McCain's amendment to end this most costly of all bailouts.

My question to the distinguished chairman is, even if he doesn't accept any of the statements I made, is it true that there are trillions of dollars in toxic assets and, if so, what are we going to do about it and when? If not on this bill, where?

The cynicism out there amongst the American people is at the highest level

I have ever seen it in the many years I have been privileged to serve. To go to the American people and say we are going to take measures which will prevent another worldwide fiscal meltdown and we are not going to address trillions of dollars in toxic assets we have already poured $145 billion into—they lifted the cap on Christmas Eve at 7 p.m, so they think it is going to be in excess of $400 billion over time, and nothing in this piece of legislation, nothing in it has anything to do with Fannie Mae or Freddie Mac. Don't be surprised at the cynicism of the American people.

I want to tell the manager, because he was not here, that I am trying to get a list of speakers, get time agreements and give him a time agreement at least on this side as soon as possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 3938 TO AMENDMENT NO. 3739

Mr. DODD. I see my colleagues here. Let me say to my friend from Arizona, what I am going to do is call up an amendment that will be a side-by-side arrangement. I will not ask for any time on this, and I appreciate him getting back so we can get a time certain.

I call up amendment No. 3938.

The PRESIDING OFFICER. Is there objection? The clerk will report the amendment.

The assistant editor of the Daily Digest read as follows:

The Senator from Connecticut [Mr. DODD] proposes an amendment numbered 3938 to amendment No. 3739.

Mr. DODD. I ask unanimous consent to dispense with the reading of the amendment.

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

The amendment is as follows:

(Purpose: To require the Secretary of the Treasury to conduct a study on ending the conservatorship of Fannie Mae and Freddie Mac, and reforming the housing finance system)

On page 1455, after line 25, insert the following:

SEC. 1077. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as "Fannie Mae") and the Federal Home Loan Mortgage Corporation (in this section referred to as "Freddie Mac"), while minimizing the cost to taxpayers, including such options as—

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) ANALYSES.—The study required under paragraph (1) shall include an analysis of—

(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, pre-payable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;

(H) the role of standardization in the housing finance system;

(I) how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

(J) the options for transition to a reformed housing finance system.

(b) REPORT AND RECOMMENDATIONS.—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

Mr. DODD. I realize people want to be heard, but I again urge my colleagues, if we can—every amendment has great value. There are about 60 amendments. At some point we have to draw the line, so I urge people to use as little time as necessary—all the time they think they need, but if we can get to a point where we can vote up or down on these two amendments, I would appreciate it very much.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, first of all, I thank the chairman for allowing us to debate this amendment this afternoon. I think this is one of the most critical amendments that certainly we have talked about to date, and moving forward, unless we address the issue of the GSEs, as I am going to talk about in a minute, I am not sure we have accomplished anything in this bill.

For all of the potential unintended consequences in this financial regulatory restructuring package, at least one will be entirely intentional—failing to address Freddie Mac and Fannie Mae.

Despite the general theme of the increased "overreaching" regulatory power of this legislation, a glaring example of something that was actually left out is a substantive attempt to address one of the most significant causes of the financial crisis—reform of the government sponsored eniterprises, or GSEs, such as Freddie Mac and Fannie Mae.

It has been highlighted from this floor that recent market volatility and a faulty trading construct in our financial markets are illustrations that the bill before us is needed now more than ever. Specifically, the sudden significant drop throughout certain exchanges last week has been pointed to as evidence of the necessity for greater regulation of our markets.

However, when news broke last week that Freddie lost $8 billion in the first quarter and would yet again be knocking on the taxpayer's door for a $10.6 billion bailout—another bailout after both Fannie and Freddie had already received $126 billion in taxpayer dollars—I failed to hear calls for reform from the other side.

And just today it was announced that Fannie Mae will ask for another $8.4 billion after posting a loss of $11.5 billion for its first quarter. Shouldn't these entities' repeated failures serve as ample evidence that the future of these "bailout behemoths" must be addressed?

Apparently, this administration feels differently, and has for some time. In fact, while it was busy cutting backroom deals over the health care bill and making noise that a government takeover of health care would reduce the deficit, in the quiet of night on Christmas Eve another deal was made—only this one didn't make it out of the backroom.

At the eleventh hour, after the Senate had finished its vote that holiday eve, the administration pledged to the mortgage its current giants unlimited financial, assistance—by lifting $400 billion cap on emergency aid without even seeking congressional approval.

How can we have a serious conversation about overhauling our financial regulatory structure, yet ignore two entities that have exposed the taxpayers to more than $5 trillion in risk as of today. As the Wall Street Journal put it recently, "Reforming the financial system without fixing Fannie and Freddie is like declaring a war on terror and ignoring al Qaeda."

Many have suggested that now is not the time to restructure these giants; that they will have to be addressed later, indicating that due to the comprehensive nature of their needed reforms, any attempt to address the problems of Freddie and Fannie here would more than double the size of the current financial regulatory reform bill.

Where were these legislative "size standards" when this body was debating health care? That bill was more than 2,000 pages long. Apparently, while we can address too big to fail, these government sinkholes have become too big to legislate.

The fact is that the number of pages in a bill is not the reason Freddie and Fannie are ignored here. And it is not for a lack of understanding the problem. There has been no shortage of hearings on GSEs, in both the House and Senate. The housing policies of this and previous administrations have chained the taxpayers to a self-perpetuating financial illness. Policies such as the Community Reinvestment Act, or CRA, which forces banks to make loans to otherwise unqualified borrowers set the stage for Fannie and Freddie to buy up these bad loans on the secondary mortgage market.

Such backward policies exacerbated the causes of the financial crises. Why would a bank not make these loans knowing they could turn around and sell them to the government? Especially when regulators were encouraging such practices? As a result, Fannie Mae, Freddie Mac and the Federal Housing Administration, or more specifically, the taxpayer, now own or guarantee about half of all outstanding residential mortgages.

It is time we address this enormous problem, the McCain amendment does that and I urge my colleagues to support it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, in deference to the chairman, I will be brief. But I come because I feel compelled today because of the two amendments this body will be dealing with: one is the McCain amendment and another amendment later in the day dealing with underwriting. So I will save the remarks on that for when those amendments are pending.

I agree with Senator CHAMBLISS, and I commend Senator MCCAIN. I come from a lifetime in the real estate business. So what I talk about, I do understand its cause and effect in the marketplace. We cannot have responsible reform of financial services and leave out Freddie Mac and Fannie Mae.

One of the reasons that, along with Senator CONRAD, I created the Financial Markets Crisis Commission—which is now meeting, by the way, and will report back at the end of December—is I knew there were pervasive and redundant failures in the system that brought about what became a cataclysmic collapse.

I understand the chairman has been under great pressure to bring this legislation forward, and I have great respect for the chairman and appreciate his work. I wish we had waited until the Financial Markets Crisis Commission reported, but we have not. So let me just for a second address Freddie and Fannie and the McCain amendment.

Freddie and Fannie filled the void the savings and loans created when they failed in the late 1980s. There are a lot of people who will hear this speech who will remember savings and loan days. Those were when savings and loans associations were chartered to make home loans. With the exception of FHA and VA, they basically made them all. There were a few players but not too many.

Those entities, by the way, those savings and loans, had 100 percent risk retention of every loan they made because their depositors put in money for the sole purpose of getting a preferred rate of interest and for mortgage loans to be made to generate the income. But they went under. They went under because of a lot of factors. One was the Federal Government changing in midstream the rules under which they operated which caused them to collapse.

Freddie and Fannie immediately filled that void. They did a great job for a long period of time by creating a secondary market for capital to be formed, put into mortgages, the mortgage be securitized, and the securities traded. It worked for a long time.

It worked, quite frankly, until a couple of things happened. One, until the government all of a sudden told Fannie it started having to own a certain percentage of what it called ''affordable loans,'' which later became known as subprime loans. In fact, Fannie Mae became the purchaser of record for the first subprime securities that were created to meet the congressional mandate to end up having these affordable loans, which made a market for those securities which subsequently were sold around the world.

So I wanted to commend the Senator from Arizona. What he brings before us is important. I do not know how we can leave Freddie and Fannie out and talk about real financial services reform in the United States of America. If anything, they need to be a critical part of it.

I recognize this legislation portends there will be a 2-year wind-down unless they improve. Then there will be a liquidation at some point in time. But let me tell you what is going to happen if nothing happens. At some point in time, Freddie and Fannie will have to be liquidated and a new entity will have to be created that will fill the void when that liquidation takes place. We are going to have the mortgage money in this country one way or another because America would not be America without it.

But we cannot tend to have a black hole and an entity that can be used for political purposes, or was used for political purposes, to create a market for securities that ultimately fails and breaks down the financial market.

I commend the Senator from Arizona. I associate myself with the remarks of the other Senator from Georgia. I thank the distinguished Banking Committee chairman for his time.

I yield back my time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to rise also and first I want to associate myself with the words from the Senator from Georgia. He is absolutely correct in his history of how Freddie and Fannie got started and what their purpose was and the fact that they are a great idea that went wrong, unfortunately—or went ''awry'' would be a better term, not wrong. The concept remains a good idea.

I rise to support Senator MCCAIN's proposal because what he is suggesting is a way out of a very deep and dark hole of debt for our Nation and our American taxpayers, which is being generated by the legacy and the present activities of Freddie Mac and Fannie Mae.

Part of this amendment in which I played a role primarily is the issue of bringing on-budget and, therefore, into the light of day just how much the American taxpayers owe as a result of the situation that has occurred in those two businesses. It is estimated that the American taxpayer will end up picking up somewhere around $400 to $500 billion in costs as a result of the activities of Freddie and Fannie.

As far as the American taxpayer knows, this will be something that comes out of the sky. I mean, nobody is aware of it. Nobody is thinking about it. Nobody is talking about it. But these are actual debts that are going to get put on our books and which will affect our credit worthiness as a nation and which all Americans will have to pay back.

Why is this going to happen? It is going to happen because during the halcyon days of taking on debt, or taking on obligations in the area of mortgages which were not properly underwritten—and there will be a later amendment by Senator CORKER which I will support in the area of underwriting—but which were not properly underwritten and which were securitized and basically insured, for all intents and purposes, by Freddie and Fannie, we ended up with a situation where they own a lot of paper which does not have the value it is supposed to have and which is not being paid back at the rate at which it was supposed to be paid back.

Unfortunately, there was a tacit understanding that grew up in the markets that the American taxpayer was going to stand behind that paper. It was never explicit, but it became tacit, and people expected that. Then when the actual event occurred, as these defaults started to accelerate, it became real and the American taxpayer is now having to stand behind all of this debt.

It is certainly going to come as a shock to most Americans that they owe approximately $½ trillion—$½ trillion—because of very bad decisions that were made by a group of people who were underwriting and basically securitizing these loans.

Why did that happen? Well, there will be a lot of recrimination on this subject. But the basic reason was that the Congress decided that Americans should own houses whether they could afford the houses or whether the houses sustained the value of their loans, Americans should be able to go out and buy houses. So a lot of houses were sold which did not have the underlying value necessary to support the loans which were made on them, and which the person who bought the house and took out the mortgage did not have the income over the extended period of time of that loan to pay it back. Everybody knew it at the time the house was bought. Everybody knew it at the time the mortgage was made. But they figured: Well, appreciation will always occur in real estate prices. So that will not bother us with the value of the house. Well, maybe this person who got the loan for the house, maybe their income will increase, or when the reset day occurs on that mortgage they will be able to take care of it in some way.

So nobody faced up to the problem at the time, and literally millions, millions of homes were purchased under that basic scenario. That is what caused the implosion, basically, of our financial markets back in late 2008, and Freddie and Fannie are a large part of that implosion. But a lot of the initiative for that came from the Congress, basically asserting that people should be able to get those types of loans, and pushing Freddie and Fannie from using what had been very standard and traditional underwriting standards in the 1990s into much more aggressive standards as they moved into the early 2000 period.

As a result, we had this proliferation of loans which simply did not have the underlying value and did not have the capacity to be repaid. They were all securitized by Freddie and Fannie. So now the American taxpayer ends up with this huge bill.

I think we have an obligation as a Congress to at least be honest with the American taxpayer on this and tell them this is how big the bill is. And it is huge. It is huge.

So this bill is now hidden in the drawer under the Federal accounting system where we do not even acknowledge that it exists under the Federal budget, even though we know we owe it, even though we know it is going to be put on the books of the Federal Government, even though we know the American taxpayer is going to have to end up picking this up in the long run. We do not even acknowledge it. It is stuck in some drawer somewhere in Washington.

Well, that should not happen any longer. We just had an amendment about transparency with the Federal Reserve. Everybody voted for it. Everybody voted for the transparency amendment on the Federal Reserve. This is the transparency amendment on Freddie and Fannie. This amendment will tell the American taxpayer just how much they really do owe. It will bring on-budget the issue of the debts of these two corporations, which are now the obligations of the Federal Government and therefore the American taxpayer. Absolutely last to be done.

I thank the Senator from Arizona for including in his amendment this language which brings this on-budget the way it should be. It opens the light of day so that the American taxpayer can understand just how much risk has been piled on their backs, how much debt has been piled on their backs as a result of the irresponsible activity, which in large part was initiated by this Congress over the years, forcing out loans and pushing a public policy that these loans should be made.

Secondly, I congratulate the Senator from Arizona for bringing forward an idea, a proposal for how we unwind this situation and how we get out of this situation by putting us on a path, a path toward basically decoupling Freddie and Fannie from the American taxpayer, having those two organizations no longer be dependent on the American taxpayer and having the American taxpayer no longer having to pick up the debts of mistakes made by those two corporations, even when those mistakes were caused, to some significant degree, by the Congress taking actions which were inappropriate—or which were bad policy, not necessarily inappropriate, but definitely bad policy.

So I congratulate the Senator from Arizona. I think this is a good amendment. As has been said, how can we take up financial reform if we do not take up the single biggest entity, the single biggest two entities, when combined the single biggest entity, that affects the financial markets relative to real estate lending in this country, which is what caused the downturn and the crisis at the end of 2008.

We cannot do it. We cannot claim we have done financial reform if we do not take on and address this issue. I understand that the administration said: Well, we will do it next year. Well, we do not have time. It needs to be done now. We need to address this now. It is a critical issue, and it is at the essence of whether we can get our house right and our ducks in the correct order relative to financial reform.

If we do not straighten out Freddie and Fannie and its relationship to the Federal Government, and specifically its relationship to the American taxpayer, we really have not done anything to solve the long-term problems of how we get our fiscal house in order because that issue of how to make real estate loans in this country is at the essence of how we correct the financial structure of this country.

This amendment, coupled with the amendment that is coming from Senator CORKER on the issue of underwriting, are the two key amendments to this bill which address the two elements which are not addressed but which have to be addressed if we are going to have effective, comprehensive, lasting, and meaningful reform.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, for the information of the manager, I have the following speakers: Senator COBURN for 10 minutes, Senator DEMINT for 10 minutes, Senator THUNE for 10 minutes. I have not been able to nail down Senator SHELBY as to how much time he will take. I would like to sum up for 5 minutes. There will be no more speakers on my side other than those.

Mr. DODD. Mr. President, I can't do the math that fast. I don't know what that amounted to, but if we add 15 minutes for myself—why don't I ask for 20 and then I will yield back. I will take maybe 10. I don't have any requests for speakers at this time, but I may want to leave space in case others may want to be heard. If we could calculate what the time is, find out about Senator SHELBY, and then lock down the time. I don't need any additional time for a side-by-side. I will use 15 minutes. As soon as we get a number on that, we will let our colleagues know.

I thank my colleague from Arizona.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Mr. President, I wish to spend a few minutes kind of general talking. I wish to give an example because this is a very big bill with a lot of hard work by the Banking Committee and their staffs. I want Members to compare this bill to a loved one who gets pneumonia. They go to the doctor and they have a cough and a fever and chills. They feel terrible. Think about it. If you would take your loved one to the doctor and the answer you would get is: I think I can take care of that. I can give you something for the cough that will suppress the cough and I will give you something to take care of the fever and I will give you a little something to take care of the pain in your chest. You go on home. You come back if you don't get better. Of course, 2 days later your loved one ends up in the hospital with raging, now bilateral pneumonia and sepsis, bacteria in the blood. This bill is kind of like that. It is kind of like a doctor treating symptoms instead of the real disease.

The real disease was Congress. The real disease was poor underwriting standards, actually no underwriting standards. The real disease was Fannie Mae and Freddie Mac, and the real disease was the rating agencies that haven't been controlled effectively by this proposed legislation. This legislation does nothing for the real disease. It treats a lot of symptoms. It grows government gigantically. It will create more bureaucrats and rules than we can shake a stick at. But it does not fix the underlying problem.

When people dispute that, ask the following question: If you are at home, working and paying your mortgage, guess what. The reason we are not fixing Fannie Mae and Freddie Mac is so you can continue to pay more taxes so Freddie Mac can solve those mortgage problems through your tax dollars and other people not being responsible for theirs.

That is what is going on here. That is why you are going to see $500 billion in additional losses with Fannie Mae and Freddie Mac, because we are going to get them to keep going until we have satisfied all this, not doing the hard work, not recognizing that we are actually going to need $5 or $600 billion more in taxes or we are going to borrow that to take care of this problem.

So everybody who is out there today who is working hard, paying the mortgage, and keeping up is going to get to pay extra because we are not going to fix Fannie Mae and Freddie Mac in this bill.

That is why this amendment is so important. We decided in this country a long time ago that we were going to set forth a policy to help people own homes, except we overdid it. We created incentives that would bring out the worst nature in people. If you don't believe that, look at Long Beach Mortgage, where 90 percent of the mortgages they wrote prior to them folding were totally fraudulent. Where was the oversight? There wasn't any—the Office of Thrift Supervision, but we didn't oversee the Office of Thrift Supervision. We created the symptom and a set of incentives and now we want to leave them right there.

This underlying bill does not address the three main diseases that caused the problems we have. Congress genuflects and redirects any criticism from us to the greedy banks or the greedy loan originators, but they never say anything about us not doing oversight. They never say anything about us not reforming Fannie and Freddie when we knew what was coming in terms of their losses and also the financial difficulties they had. We have a bill that doesn't fix it—a lot of hard work, a lot of good intentions, but it doesn't fix the core problems so they will not occur in the future.

As the Senator from New Hampshire said, if you combine strong underwriting standards and transparency associated with limiting the loss the American taxpayer is going to take on with Fannie Mae and Freddie Mac, you will do something. But the way the bill is now, we will have created big theatrics. Everybody will shake hands and holler and dance around when the bill passes, except the dirty little story will be that we didn't fix the real disease. When that loved one in ICU with double pneumonia and sepsis dies, we go after the person who didn't fix it, who should have fixed it, who had the knowledge to fix it, and we say: You are liable.

Well, we are liable. We ought to be fixing this. The very fact is we are not.

The McCain amendment is a commonsense amendment. I understand the reservations. They don't want another $400 billion of recognized debt. They don't want to account for the losses that are continuing to flow, $20 billion so far in the first quarter of this year, out of those two institutions. The Senator from New Hampshire way underestimated the cost to the American taxpayer and what it will ultimately be by not fixing this.

My appeal to the chairman of the committee is to seriously look, give us good answers on why we are not fixing Fannie Mae and Freddie Mac. What are the real reasons we are not fixing that? What are the real reasons we are not creating strong, transparent underwriting standards so the problem doesn't occur in the future? What is the real reason? What is the real reason we don't hold accountable the rating agencies and take away the conflict of interest thoroughly—not partially but thoroughly—from the rating agencies?

The rating agencies are supposed to be a check. Had they been doing their jobs, we wouldn't have had all these securities sold that were worthless or were nonperforming. But they don't do their job. We didn't do our job. Fannie Mae and Freddie Mac didn't do their job. Yet we are not going to address the core issues that created the setup and framework we are now experiencing as an economy. To me, that creates a tremendous amount of liability on our part. We ought to have to be in explanation of every ounce of our being on why we don't fix the real disease that caused this problem.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, let me speak for 5 minutes. I ask the Chair to inform me when I have done so.

First, let me notify my colleagues, we don't have a time agreement yet, but I hope we will shortly on the McCain amendment and the amendment I will offer as a side-by-side on this issue.

I ask unanimous consent to have printed in the RECORD letters from the National Association of Home Builders and the National Association of REALTORS, both of which oppose the McCain amendment.

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

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, DC., May 6, 2010.

Hon. JOHN MCCAIN,
U.S. Senate, Washington, DC.

DEAR SENATOR JOHN MCCAIN: On behalf of the 175,000 members of the National Association of Home Builders (NAHB), I am writing to express our strong concerns with an amendment offered by Senator John McCain (R-AZ) dealing with the future of the housing Government Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac.

Fannie Mae and Freddie Mac have been, and remain, critical components of the U.S. housing finance system. NAHB is working with Congress to craft a thoughtful approach to the future of these institutions, as well as the future of the housing finance system itself. However, we remain concerned about how to get from the current structure to a future arrangement without undermining ongoing financial rescue efforts and disrupting the operation of the overall housing finance system. Any changes should be undertaken with extreme care and with sufficient time to ensure that U.S. home buyers and renters are not placed in harm's way, and that the mortgage funding and delivery system operate efficiently and effectively as a new system is put in place.

NAHB is concerned that the provisions in the McCain amendment, if the GSEs are deemed viable, dealing with portfolio limitations, loan limit repeals and escalating mandatory down payments would greatly limit the GSEs' ability to participate in the secondary housing market and lead the housing market into recovery. Moreover, NAHB is concerned that the McCain amendment could effectively end the current housing finance delivery system without offering a thoughtful replacement.

Again, NAHB has strong concerns with the impact the McCain amendment would have on the current housing finance system, and urges the Senate to address the future of Fannie Mae and Freddie Mac in a thoughtful and deliberative manner.

Best regards,

JOSEPH STANTON,
Senior Vice President and Chief Lobbyist, Government Affairs

NATIONAL ASSOCIATION OF REALTORS,
Washington, DC, May 6, 2010.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of more than 1.1 million members of the National Association of REALTORS® (NAR) involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, I respectfully request that you oppose the Corker-Gregg-Isakson (#3834) and the McCain-Shelby-Gregg (#3839) amendments to S. 3217, the Restoring American Financial Stability Act of 2010.

CORKER-GREGG-ISAKSON AMENDMENT

The Corker-Gregg-Isakson (#3834) amendment replaces the risk retention provisions of S. 3217, Title VII, Subtitle D, (b) Credit Risk Retentions—with a study on the feasibility of risk retention requirements for financial institutions and implements residential mortgage underwriting standards that include a mandatory 5% down payment for all mortgages. As our nation continues to recover from the worst economic downturn since the Great Depression, REALTORS® are cognizant that lax underwriting standards brought us to this point, and must be curtailed. However, we caution that swinging the pendulum too far in the opposite direction may reverse our fragile recovery.

Based on data from NAR's 2009 Profile of Home Buyers and Sellers, 11% of all home purchasers surveyed had downpayments of 5% or less. When considering only first-time homebuyers, the percentage utilizing a downpayment below 5% increase to 18%. Improving underwriting to ensure that the consumer has the ability to repay their obligation is in the best interest of everyone, but eliminating the possibility for some creditworthy consumers to buy a home will have significant detrimental ramifications for American families, the housing sector an those businesses that support it.

MCCAIN-SHELBY-GREGG AMENDMENT

The McCain-Shelby-Gregg (#3839) amendment, which creates Title XII to S. 3217, places Fannie Mae and Freddie Mac on the fast track to dissolution. REALTORS® believe that reform of these institutions that have played a pivotal role in the evolution of the U.S. housing market is necessary; however now is not the time for drastic action, especially considering their current role in stabilizing the housing market, and that the McCain-Shelby-Gregg amendment does not offer a replacement to fill the enormous gap that the shuttered GSEs will leave.

As NAR mentioned in our testimony before the House Financial Services Committee, March 23rd, 2010, on the ''Future of the Housing Finance'', the transition of these organizations to their new form must be conducted in a fashion that is the least disruptive to the marketplace and ensures mortgage capital continues to flow to all markets in all market conditions. The establishment of aggressive timetables for the GSEs to return to profitability, prior to the full recovery of our nation's economy and housing market, predisposes them to failure, and will cause significant angst for homebuyers and the nation's housing markets.

Furthermore, the requirements that this amendment places on Fannie Mae and Freddie Mac, when they become viable, will effectively prohibit them from participating in the secondary mortgage market.

First, the aggressive reduction of their portfolio will prevent them from being an effective buffer during future economic downturns. A key element of NAR's recommendation for the restructure of the GSEs is that their portfolios should only be large enough to support their business needs and ensure a stable supply of mortgage capital when necessary because of insufficient private investment. The requirements established in this amendment would thwart the GSEs' ability to be an effective buffer.

Second, the amendment repeals all increases to loan limits, both permanent and temporary. The loan limits would return to: $417,000. Moreover, the GSEs would be prohibited from purchasing homes that had prices over the median-home price, for properties of the same size, for the area in which the property was purchased. This would reduce loan limits to less than $100,000 in some areas, less than half the current FHA floor.

NAR advocated for the increase of the loan limits for high cost areas and is actively advocating that the current limits be made permanent in order to ensure that creditworthy homebuyers have access to affordable capital. The housing market remains fragile, and private capital has not returned to either the mortgage or MBS markets to the extent that is needed to support the housing industry. Reducing the GSEs' loan limits to the suggested levels will significantly limit the ability of homebuyers to obtain mortgage funding throughout the country, and damage the business sectors supported by mortgage finance.

Third, the amendment establishes an escalating mandatory down payment percentage that REALTORS® believe unfairly and unnecessarily denies the opportunity to many families who have the potential to succeed as homeowners. Beginning 1-year after the 24-month assessment period, the minimum down payment requirement will be 5%. 2-years out, the downpayment will be 7.5%. After three years, the downpayment will be 10% for conventional-conforming loans.

The removal of flexible downpayment options will significantly reduce the ability of creditworthy consumers to purchase a home. As mentioned with regard to the Corker-Gregg-Isakson amendment, a 5% downpayment requirement excludes 11% of all current homebuyers and 18% of all current first-time homebuyers, based on NAR's most recent homebuyers survey. Increasing the downpayment requirement to 10% would exclude nearly 25% of all current creditworthy borrowers, and up to 37% of current creditworthy first-time homebuyers. Underwriting standards have already been corrected and loans are only available for borrowers who can afford them. There is no reason to overcorrect by imposing higher downpayment requirements.

As we have seen, without the GSEs, the current crisis would have been even more catastrophic for the housing market and the overall economy, as virtually no activity would have occurred within the housing sector because little private capital would have been available. REALTORS® support reforming our housing finance system, and the GSEs. However, taking a measured approach is critical to ensuring that our economic recovery remains viable.

I appreciate the opportunity to share with you the views of more than 1.1 million real estate practitioners and respectfully request that you oppose the McCain-Shelby-Gregg (#3839) and the Corker-Gregg-Isakson (#3834) amendments to S. 3217, the Restoring American Financial Stability Act of 2010.

Sincerely,

VICKI COX GOLDER, CRB,
2010 President,
National Association of Realtors®.

Mr. DODD. I say this with all due respect, but the McCain amendment says that in 24 months we get rid of Fannie and Freddie. I don't call that reform. They are just getting rid of something. What are the implications of just getting rid of Fannie and Freddie? The fact is, Fannie Mae and Freddie Mac, at this juncture, account for 96.5 percent of all funding for all mortgages today. The amendment could undermine the supply without establishing any alternative, and there is no alternative. It just says in 24 months you get rid of Fannie and Freddie. That is a wonderful conclusion, except for the fact that what you get for that—and I don't make up these numbers—is higher interest rates on mortgages, declining values in properties, the possibility of eliminating the 30-year fixed rate mortgage, which only exists because, frankly, we have had the Fannie Mae and Freddie Mac mortgage program.

This program needs to be fixed. There is no question about it. We need an alternative housing financing system. That is without question. But this amendment doesn't offer any. It just says get rid of the one we have.

As the letter from the National Association of REALTORS reads:

[It] places Fannie Mae and Freddie Mac on a fast track to dissolution. REALTORS believe that reform of these institutions, that have played a pivotal role in the evolution of the U.S. housing market, is necessary; however, now is not the time for drastic action. Especially, considering the current role in stabilizing the housing market. [The McCain] amendment does not offer a replacement to fill the enormous gap that the shuttered GSEs will leave.

That is what we are being asked to do. In the letter from the National Association of Home Builders, they write:

Fannie Mae and Freddie Mac have been, and remain, critical components of the U.S. housing finance system. However, we remain concerned about how to get from the current structure to a future arrangement without undermining ongoing financial rescue efforts and disrupting the operation of the overall housing financing system. Any changes should be undertaken with extreme care and with sufficient time to ensure that U.S. home buyers and renters are not placed in harm's way, and that the mortgage funding and delivery system operate efficiently and effectively as a new system is put in place.

We have to do this carefully. It was the housing problems that got us into this mess. It was not Fannie and Freddie. It was this notion of a deregulated environment that occurred. All the problems emerged in the unregulated sector—unregulated brokers, unregulated mortgage companies. They were luring people into mortgages they could not afford, with no documentation, no background checks whatsoever. That is the genesis of this whole issue. Read a new book, ''The Big Short,'' if you want a good read about the genesis of this problem. I should not be in the business of promoting books, but that book will lay out what happened. Fannie and Freddie contributed to the problem further out, but the problem began in a totally unregulated environment, an unregulated environment that was promoted by the Chairman of the Federal Reserve and his advocates and supporters over the years. That is the origin of the mess that got us into this. Today there is no backup. If 96.5 percent of mortgages are backed by these two institutions right now, what replaces it? There isn't any with this amendment. We are left in a free fall. Who gets hurt? Average Americans. Clearly, we have to step up. Our amendment that we will offer as a substitute demands within 6 months a plan be laid out. There are a lot of different ideas on how to do it. We have had a lot of hearings and discussions on what ought to replace the present housing financing system. But I don't know of anyone who has come to one single conclusion on what the best alternative is. Some have advocated a public utility concept. That has very attractive features to it and is one I would be inclined to be supportive of. There are other ideas on how to do this, but to just eliminate it altogether, without an alternative, at a time when we are just beginning to get back on our feet, housing values are beginning to creep up, housing sales are beginning to move forward?

Again, if we leave this sector of the economy with the kind of disruption created by this amendment, then we could fall right back into a recession. We have lost 8.5 million jobs, 7 million homes have been lost, 4 million homes today are underwater in the United States, and 250,000 have been seized in the first 3 months of this year. If we want to contribute to that, if that is what our goal is in this bill, to decide on a whim and offering an amendment just to strike these two entities that exist with all their problems, that this is the way to deal with the housing problem, it would be a drastic mistake to make, having an amendment such as this be adopted. That is the reason I feel strongly about it. That does not, in any way, take a backseat to the notion we have to come up with an alternative housing financing system. That is absolutely certain. This amendment does not do that. It just gets rid of the present one without replacing it with anything. That is not the way to engage in the kind of reform that is needed.

I think my 5 minutes have expired.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, before I yield to Senator THUNE, in response to Senator DODD's statement, I am incredulous that we would somehow believe Fannie and Freddie were not among the prime reasons for this financial meltdown.

Peter Wallison, who is a fellow in financial policy studies at the American

Enterprise Institute and is a leading expert on banking and securities regulation, has written extensively about this issue and says:

The roots of the financial crisis date back to 1993, when Fannie Mae and Freddie Mac—

With the encouragement, by the way, of Members of Congress, including the passage of the Community Reinvestment Act, which basically forced people to give home loan mortgages to people who could never pay them back—he goes on to say—

began stocking up on subprime mortgage assets and other risky loans while reporting them as prime. The agencies' conflict of interest between lending to low-income borrowers and minimizing risk-taking activity may be to blame for their behavior, however, it is certain that the government's failure to properly regulate the enterprises has created one of the worst policy disasters in history.

On Christmas Eve, when most Americans' minds were on other things, the Treasury Department announced it was removing the $400 billion cap from what the administration believes will be necessary to keep Fannie Mae and Freddie Mac solvent. This action confirms that the decade-long congressional failure to more closely regulate these two government-sponsored enterprises (GSEs) will rank for U.S. taxpayers as one of the worst policy disasters in our history.

That is the view of most economists. How in the world someone as knowledgeable as the distinguished chairman of the committee does not recognize this is one of the prime reasons for the failure, this is one of the prime reasons why 48 percent of the homes in Arizona are underwater, where people are throwing keys in the middle of the living room floor because they cannot afford to make the payments.

The enablers were Fannie Mae and Freddie Mac—the enablers of all this. Time after time, this Congress—this Congress—put pressure on them to increase their home loan mortgages to people who could never afford to pay their mortgages. We know that is the cause of it, and how the Senator from Connecticut can somehow allege that Fannie and Freddie were not—as Mr. Wallison says, the ''action confirms that the decade-long congressional failure to more closely regulate these two government-sponsored enterprises will rank for U.S. taxpayers as one of the worst policy disasters in our history.''

This morning, Mr. Wallison is quoted as saying:

Right now we have a consensus that something needs to be done. The sensible thing to do is to put Congress in a position where they have to act within a certain period of time.

That is what this amendment does. They have to act in a certain period of time. The Senator wants to know who should be making home loans? Community banks. Community banks should be making home loans to people. They should be able to extend lines of credit to small businesses. But the main thing is, it should not be given to a government-sponsored enterprise to keep it in business, where the hundreds of billions of taxpayer dollars being spent is unlimited.

I yield the floor. Senator THUNE, I believe, has 10 minutes.

The PRESIDING OFFICER (Mrs. GILLIBRAND). The Senator from South Dakota.

Mr. THUNE. Madam President, I thank my colleague from Arizona for yielding me time.

I would say Fannie Mae and Freddie Mac is a pox on all of us. But shame on us if we do not try to do something in this legislation to address this issue. What the McCain-Shelby-Gregg amendment does is responsible. It does allow for a wind-down of this conservatorship. But, as the Senator from Arizona has pointed out, it goes squarely at what I think most economists argue was a huge contributor to the meltdown we experienced a couple years ago: the runaway lending and irresponsible lending practices that were involved with the plight we now see with Freddie Mac and Fannie Mae, where they have, up until, I think, this last quarter—or taking the last quarter combined, it is about $145 billion now that the taxpayers are on the hook for.

As the Senator from Arizona pointed out, last Christmas Eve the administration lifted the cap. There was a $400 billion cap on the amount of taxpayer assistance that could be provided to these two institutions. But now that cap has been lifted. Imagine the scale and dimension of what we are talking about, when we already have $145 billion of taxpayer exposure. We assume it could be as much as $400 billion. But just in case, the administration lifts the cap because it could go well beyond that, which suggests, if history is any indication, it will go well beyond that.

What this does is say we need to exercise some responsibility with regard to the regulation of all the financial institutions in this country. What the Senator from Connecticut, in his bill, does—with the financial services regulation reform bill—is to attempt to get at what contributed, in many respects, to the meltdown we experienced a couple years ago. But it ignores perhaps, as has been pointed out by the Senator from Arizona, one of the biggest contributors to that problem; that is, these two toxic institutions, Freddie Mac and Fannie Mae.

The administration has said they need time to come up with a plan. The side-by-side that is going to be offered by the Democrats is going to be a study. We are going to study this for about 6 months. I think their argument is, it would be dangerous to rush the process. I think the contrary is true. I believe it is dangerous to ignore this problem any longer. We cannot afford to wait so more taxpayer money can be lost, can be wasted in trying to keep these two entities afloat.

As I said before, last week we were informed that Freddie Mac needs an additional $10.6 billion in taxpayer funds due to an $8 billion loss in the first quarter of 2010. Since September of 2008, that brings the taxpayers' invoice for Freddie Mac to $61.3 billion.

Fannie Mae reported a first quarter loss of more than $13 billion, needing $8.4 billion from the government, putting their bill to the American taxpayers at $83.6 billion.

So the grand total of taxpayer loss from these two entities since their takeover in 2008 is a whopping $145 billion.

The losses racked up by Freddie Mac and Fannie Mae exceed—exceed—the government's losses on AIG, General Motors, and Chrysler. Yet the current legislation in the Senate is completely silent on these two entities. That is outrageous. We cannot continue to funnel unlimited amounts of taxpayer money into Freddie and Fannie and have no plan to end this siphon.

In a time when we are faced with crushing debt and out-of-control deficits, we are willing to turn a blind eye to a $145 billion problem, which is going to only magnify over time. Last Christmas Eve, the administration lifted the cap of $400 billion, which is what initially was put in place that would limit the amount of taxpayer exposure. But what we are now saying is that may not be enough. Yet we do nothing—nothing—in this legislation to remedy this problem.

Obviously, the administration knew there was more bad news ahead when they decided to lift the cap on government assistance on Christmas Eve of last year. The Obama administration decided that taxpayers could afford unlimited funding for Freddie and Fannie rather than keep a $400 billion cap on assistance in place. It is frightening they believe that $400 billion is not going to be enough—unlimited funding may not be enough. Who knows where this ends.

That is why I think it is important right now that we deal with this issue, and the McCain-Shelby-Gregg amendment does it in a responsible way by winding down and providing a timeline. It sets a 30-month date out there by which this conservatorship has to be wound down.

If you look at what the current exposure is in terms of Freddie and Fannie, they own or guarantee over 30 million home loans, worth about $5.5 trillion. The CBO estimates that Freddie and Fannie could cost the taxpayers as much as $380 billion through 2020. As I said before, my assumption is that because we lifted—''we,'' the administration lifted—the cap on the $400 billion of exposure, the assumption is, it is going to go much higher than that. So I think we have to ask ourselves this fundamental question: Is this the direction in which we want to continue heading or is it time to change course?

The time to change course is now while we are debating a bill that is designed to address the very problems we encountered a couple years ago. Freddie and Fannie, as the Senator from Arizona said, were at the very heart, the very core of that issue.

According to a recent Washington Post article, with the government's conservatorship of Freddie and Fannie and the increase in FHA and VA loans, the government backed nearly 97 percent of home loans in the first quarter of 2010. Madam President, 97 percent of loans are backed by the U.S. Government. Is this where we want to end up? Is this where we want to head? Is this the best course for our housing market? Is this the role the Federal Government should be taking when it comes to housing in this country?

I firmly believe it is time we change course. I think there is great value—we all agree there is great value—in home ownership and helping families achieve the American dream of owning their own homes. But we have to bring personal responsibility back into the conversation. We need to go back to a time when families saved up money to make a downpayment on a house. They went to their banks. They provided the necessary documentation to prove they could pay back their loans, and they bought a house that was within their budgets. Buying and owning a home should be a goal people work to achieve, not a government mandate funded by the taxpayers. That essentially is what we have created.

So I believe it is about time to take responsibility for our actions. My constituents in my State who bought houses they could afford and paid their bills on time want to see Congress start taking some responsibility. I believe the McCain-Shelby-Gregg amendment does just that. It shows our commitment to getting our fiscal house in order in Washington, DC.

As I said, it is a sound plan for winding down the government backstop to Freddie Mac and Fannie Mae. It mandates that conservatorship will end in 30 months or less. Freddie Mac and Fannie Mae will have to reduce their portfolios by 10 percent each year, and if they are not viable enough to exist after the 30 months they will be liquidated. If they are a viable company after the 30 months, they would only enjoy their Federal GSE status for another 3 years.

The amendment repeals the affordable housing goals that persuaded the two entities to enter into the subprime loan business in the first place, which I believe was the slippery slope that got us into all the problems, all the troubles we are facing today.

It creates new underwriting requirements on loans purchased by Freddie and Fannie. Freddie and Fannie will have to reduce their mortgage assets by more than 50 percent within 2 years and increase their capital reserves. It repeals the temporary increase in the conforming loan limit, returning it to $417,000. The two would have to pay State and local taxes, register with the SEC, and pay a fee to the government to repay their debts to the taxpayer.

These are all responsible reforms. Contrary to the assertions that have been made by the other side, this amendment is the correct way to proceed in dealing with these two giant institutions that have lost their way and are costing the taxpayers literally billions and billions and billions of dollars every quarter that passes that we do not take steps to fix this problem.

The amendment would reinstate the $400 billion cap that the administration lifted in December so the taxpayers know for certain they are not going to be on the hook for unlimited financial support.

The amendment establishes a new special inspector general at the GAO to investigate and report to Congress on these two entities. Freddie and Fannie would be included in the Federal budget until their conservatorship has ended, which is the fiscally responsible thing to do when we all know they do, in fact, have an impact on our budget and on our debt.

As I said, I have heard the arguments on the other side of the aisle, and I think they are ignoring the clear will of the American people. The American people get this. They know why we are where we are. They are sick and tired of subsidizing the mistakes of Freddie Mac and Fannie Mae. We need to put an end to the taxpayer bailout.

I think it is important to the credibility of our economy and our credibility with the American taxpayers—but it is important to the credibility of the markets and to our economy—that they understand we are serious about solving this problem. That is why the McCain-Shelby-Gregg amendment is the correct way to proceed. We are going to have a vote on that very soon, and I hope we will not leave this subject, that we will not dispose of this financial services regulation reform bill without addressing this very important topic.

To suggest for a minute, as the other side has, that somehow we can do a study, we can put this off for 6 months—and who knows. By the time they complete the study, they will have to think about the results of that study and formulate a plan, and that will take another 6 months or a year. Every single month, every single quarter that goes by, we continue to hemorrhage more and more money at the cost of billions and billions of dollars to the American taxpayers. They have had enough. We should say we have had enough and we are going to bring some discipline. This amendment does that, and I hope my colleagues will support it.

I yield the remainder of my time.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. SHELBY. Madam President, as part of the debate on the McCain-Shelby-Gregg amendment, I wish to take this opportunity this afternoon to discuss the history of Fannie Mae and Freddie Mac from my perspective. By doing this, I want to emphasize past Republican attempts at regulating and reforming these institutions, while also discussing their role in the financial crisis.

The government-sponsored enterprises that we call Fannie Mae and Freddie Mac were key players in the collapse of the U.S. housing market. Their multitrillion dollar portfolios gave them the purchasing power to drive markets. In addition, false presumptions about their housing finance expertise and their connections to the government gave them further power to influence the housing market. And let us not forget the GSEs' nationwide lobbying and public affairs apparatus that was designed to keep reformers at bay and their supporters flush with cash.

When the GSEs began to buy subprime securities, other firms, including most of the Wall Street banks, took this as a signal that subprime mortgage securities were safe and worthwhile investments. In effect, Fannie Mae and Freddie Mac placed the Good Housekeeping ''Seal of Approval'' on these risky instruments. As a result, the rest of the market engaged in this practice, and the race to the bottom began. Ultimately, the GSEs' collapse lit a wildfire that burned throughout the financial markets.

Due to their miscalculations, Fannie Mae and Freddie Mac have been placed in conservatorship and have already cost the taxpayers well over $100 billion. Just last week, we learned that the GSEs will need another $20 billion in taxpayer assistance for their losses during the previous quarter.

This did not have to happen. For years, the warning signs were flashing, and Republicans made multiple attempts to adopt the necessary reforms. Unfortunately, those efforts were opposed by Democrats in the Senate Banking Committee and ultimately caused the many efforts put forth by Republicans to stall in the Senate.

In 2003, as chairman of the Banking Committee at that time, I held multiple hearings on proposals for improving the regulation of the GSEs. I wish to read a portion of my opening statement from one of those hearings. I quote from that time:

> The enterprises are large institutions. Collectively, Fannie Mae and Freddie Mac carry $1.6 trillion in assets on their balance sheets and have outstanding debt of almost $1.5 trillion. The Federal Home Loan Bank System is not far behind, with combined assets of over $780 billion and outstanding advances to member institutions of $495 billion. Due to the importance of the housing GSEs' mission, and the size of their assets, I believe that the enterprises require a strong, credible regulator.

I further read from the statement then:

> I remain concerned that the current regulatory structure for housing the GSEs is neither strong nor credible.

At this same hearing, it became apparent that the two parties had very different perspectives regarding the need for reform. One of my Democratic colleagues noted—and it is in the record:

There is an old expression, if it ain't broke, don't fix it. I think some of us here in the Senate believe that when we try to fix things that aren't really broken, we can end up doing more harm than good.

Notwithstanding the mindset on the other side of the aisle, my Republican colleagues and I persevered, and we remained engaged in the effort to reform the GSEs by holding numerous hearings and closely tracking the GSEs' activities at that time.

We decided those who believed ''things aren't really broken'' were wrong. In the face of strong Democratic opposition and a relentless lobbying campaign by the GSEs and their supporters, we proceeded with a markup of the Federal Housing Enterprise Regulatory Reform Act of 2004.

I wish to again read portions of my brief opening statement from that markup which lays out the issues and the responses we crafted to address the problems of the GSEs then:

This afternoon the committee will consider S. 1508, a bill to address regulation of the housing GSEs.

Today, we are faced with the most important decisions considered by this committee in years—determining the strength, independence and credibility of regulation of our nation's Government Sponsored Housing Enterprises. The strength, independence and credibility of this regulatory system have tremendous implications for the future health and vitality of our housing markets, our capital markets, and the economy as a whole.

I continue to quote the statement:

Freddie Mac and Fannie Mae currently have $1.7 billion debt outstanding. To provide some perspective, our nation's Treasury debt in the hands of the public stands at just over $4 trillion. The Federal Home Loan Bank System has also grown significantly since the 1990s and has a vastly expanded membership base.

Its current regulator is not up to the task of providing adequate oversight of its significant role.

My statement continued:

Fannie Mae is the second largest financial institution in the United States. Freddie Mac is fourth. Their debt is held by foreign central banks, insurance companies, money center banks and community banks. Because of the interest rate risk these GSEs must manage, they have an extensive network of derivative contracts. Should one of these institutions encounter significant financial difficulty it could make the S&L crisis pale by comparison.

I was here speaking as an early member of the Banking Committee, as was Senator DODD, during the bailout of the S&Ls. And it was no pretty matter. It ended up costing the taxpayers at least $130 billion.

I continue:

This experience has only reaffirmed my resolve to ensure such a debacle never revisits the taxpayer. And, quite simply, the real truth is we cannot afford a crisis of the magnitude a failing GSE would pose.

I approach this markup today with a firm appreciation of the gravity and relevance of what we do here today. I state again, as I have before—I support the housing missions of the GSEs. Home ownership is the primary source of wealth for many Americans. It fosters strong communities and promotes stability for children and families.

But, and I believe there is consensus in this Committee on this one point at least, they are not well-regulated and, therefore, pose significant risk to the taxpayer and the markets they serve.

To be clear: they are not well-regulated because the regulatory structures and authorities that Congress created are insufficient and weak by design.

And that is what the draft before us is all about. Reaffirming the important mission of GSEs, creating a regulator that has all the tools and independence that other first class financial regulators require, and protecting the taxpayer. These are the guiding principles that animate the draft that I have put forth before the Banking Committee today.

Unfortunately for the taxpayers of this country, politics got in the way of advancing credible public policy then. Apparently, the Democrats felt it was better to block necessary change, adhere to the status quo, and ignore the risk to the financial system, all while leaving the taxpayers fully exposed.

We, the same Republicans who have been characterized by Democrats as being pro-Wall Street and antiregulation throughout this process, were trying to create a stronger regulator, raise capital standards, reduce risk taking, and put in place a resolution regime that would limit taxpayer exposure in the event of a firm failure.

That was a number of years back. I wish to revisit the words of one of my then-Democratic colleagues who made the following statement—and it is in the record—as we debated the merits of the Republican GSE reform bill at that time:

Lord only knows where the economy would be today if it were not for the stability of the housing market in the midst of so much turbulence and the ability of Americans to draw down some of their home equity to engage in consumer purchases.

Then, as we stood on the precipice of a housing and financial meltdown, my Democratic colleagues were opposing more regulation and promoting more consumer spending. As if that were not bad enough, we were encouraging homeowners to raid the home's equity to finance their purchases. And look where it brought us.

Another Democrat took issue with the fact that we attempted to give the regulator the power to place a GSE into receivership:

Receivership, first, it does not have to be in the bill, but, second, to allow a regulator who may not like this institution to then sort of dole out little pieces of it one way or another and weaken the fundamental structure of Fannie and Freddie easily leads to its demise.

I am not sure whether my colleagues then understood the basic concept behind establishing an orderly resolution process, but I hope the lesson has now been learned. Ironically, Democratic opposition to strong reform actually produced the exact outcome my colleague feared. When reform stalled in the face of Democratic objections, investors once again viewed Fannie Mae and Freddie Mac as ''too big to fail.'' They were confident that Congress and the U.S. Government would never allow them to go under. This, of course, gave the GSEs a significant financing cost advantage which led to their explosive growth and excessive risk taking.

Finally, and most telling, one of my Democratic colleagues was concerned about how Wall Street might interpret the regulatory changes that Republicans were advocating, stating:

It is a fact that just mere speculation about the prospects of some provisions in the bill is sending shock waves through Wall Street.

Really?

When Wall Street became concerned that our legislation at that time would provide a stronger regulator, require higher capital standards, mandate less risk taking, and establish a well-designed resolution regime, the Democrats came to Wall Street's rescue, not the Republicans.

When the choice was between Main Street and Wall Street, the Democrats made it absolutely clear whose side they were on. They chose Wall Street, and Wall Street ultimately paved the road that led to this collapse.

I ask unanimous consent to have printed in the RECORD a copy of the recorded vote of the proceedings of that day in the Senate Banking Committee. That result was a party-line vote with all 12 Republicans voting for GSE reform and all Democrats opposing it.

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

MARKUP OF S. 1508, THE FEDERAL HOUSING ENTERPRISE REGULATORY REFORM ACT OF 2004

The Committee met, pursuant to notice, at 2:10 p.m., in room SD–538, Dirksen Senate Office Building, Senator Richard Shelby (Chairman of the Committee) presiding.

Present: Senators Shelby, Bennett, Allard, Enzi, Hagel, Santorum, Bunning, Crapo, Sununu, Dole, Chafee, Sarbanes, Dodd, Johnson, Reed, Schumer, Bayh, Carper, Stabenow, and Corzine.

STATEMENT OF CHAIRMAN RICHARD SHELBY

Chairman Shelby. The Committee will come to order.

This afternoon, the Committee will consider S. 1508, a bill to address the regulation of the housing GSEs. I will start by acknowledging the original cosponsors of this bill—Senator Hagel, Senator Sununu, and Senator Dole—and I want to commend them for their dedication and their work, originally, and including putting together what we have today.

Today, we are faced with the most important decisions considered by this Committee in years; that is, determining . . .

I now move and ask a roll call vote on the original bill, the substitute. Call the roll.

The Clerk. Mr. Chairman?

Chairman Shelby. Aye.

The Clerk. Mr. Bennett?

Senator Bennett. Aye.

The Clerk. Mr. Allard?

Chairman Shelby. Aye, by proxy.

The Clerk. Mr. Enzi?

Senator Enzi. Aye.
The Clerk. Mr. Hagel?
Senator Hagel. Aye.
The Clerk. Mr. Santorum?
Chairman Shelby. Aye, by proxy.
The Clerk. Mr. Bunning?
Senator Bunning. Aye.
The Clerk. Mr. Crapo?
Chairman Shelby. Aye, by proxy.
The Clerk. Mr. Sununu?
Senator Sununu. Aye.
The Clerk. Mrs. Dole?
Chairman Shelby. Aye, by proxy.
The Clerk. Mr. Chafee?
Senator Chafee. Aye.
The Clerk. Mr. Sarbanes?
Senator Sarbanes. No.
The Clerk. Mr. Dodd?
Senator Dodd. No.
The Clerk. Mr. Johnson?
Senator Sarbanes. No, by proxy.
The Clerk. Mr. Reed?
Senator Reed. No.
The Clerk. Mr. Schumer?
Senator Sarbanes. No, by proxy.
The Clerk. Mr. Bayh?
Senator Bayh. No.
The Clerk. Mr. Miller?
Chairman Shelby. Aye, by proxy.
The Clerk. Mr. Carper?
Senator Carper. No.
The Clerk. Ms. Stabenow?
Senator Stabenow. No.
The Clerk. Mr. Corzine?
Senator Corzine. No.
The Clerk. Chairman, the ayes are 12, the nays 9.
Chairman Shelby. The bill is adopted.

Mr. SHELBY. Madam President, that was not the end of the story, though. More than 1 year later, we tried again to pass these important reforms. The Banking Committee held more hearings leading to the markup of S. 190, the Federal Housing Enterprise Regulatory Reform Act of 2005. I will not read my entire statement from this markup, but I will read a part of it that describes the commonsense steps that we were attempting to take with our newest effort to pass then GSE reform. I quote from that markup:

My legislation creates a new regulator with combined oversight for both the safety and soundness and the housing mission of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System.

The new regulator will have general regulatory authority over all housing GSEs, including enhanced authority over capital requirements, and enforcement and prompt corrective action authorities that are comparable to those of the bank regulatory agencies.

Among other enhanced regulatory authorities, the bill we will consider today includes clear direction on portfolio review for compliance with safety and soundness, mission and systemic risk.

Under this proposal, the enterprises are permitted to hold those assets which promote the enterprises' mission in the housing market.

The bill also transfers the product review function from HUD to the new regulator and creates a two-tier approval process through which the enterprises must receive approval prior to offering any new product.

The bill also establishes new criteria for approval of a product that will ensure the enterprises remain focused on their statutory mission of facilitating a secondary mortgage market.

The new regulator will also have the power to conduct an orderly resolution of a failing or insolvent GSE through a receivership process. This clear and definitive process for dealing with a troubled enterprise is a critical tool for the credibility and strength of a new regulator.

Madam President, unfortunately, the Democrats did not share my view of increasing regulations on the GSEs, and their comments during the second attempt to pass meaningful reforms are telling. One of my Democratic colleagues stated then, ''When the sink is leaking, you do not tear down the house, especially if the house has served you well.'' Another recalled a critique he read of the bill before the markup, which claimed, ''It is like trying to cure the common cold with chemotherapy.''

In fact, at one hearing, one of my Democratic colleagues expressed an interest in hearing how the roles of the GSEs might be increased, when he explained:

I am not only interested in hearing about the role GSEs currently play in the mortgage market, I am also interested in how their commitment to home ownership and affordable housing can be expanded.

In the end, the result of our 2005 markup was the same as our 2004 markup—a strict party-line vote with all 11 Republicans supporting the reforms and all 9 Democrats opposing them. Unfortunately, the Democrats once again sided with Wall Street and the special interests by rejecting GSE reform and any attempt to move the legislation beyond the Banking Committee.

Madam President, I ask unanimous consent to have printed in the RECORD a copy of that recorded vote in the Banking Committee.

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

MARKUP OF THE NOMINATIONS OF HON. CHRISTOPHER COX, TO BE CHAIRMAN, U.S. SECURITIES AND EXCHANGE COMMISSION; HON. ROEL C. CAMPOS, TO BE COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION; ANNETTE L. NAZARETH, TO BE COMMISSIONER, U.S. SECURITIES AND EXCHANGE COMMISSION; JOHN C. DUGAN, TO BE COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY; HON. JOHN M. REICH, TO BE DIRECTOR, OFFICE OF THRIFT SUPERVISION; AND MARTIN J. GRUENBERG, TO BE MEMBER AND VICE-CHAIRMAN, FEDERAL DEPOSIT INSURANCE CORPORATION, AND OF S. 705, MEETING THE HOUSING AND SERVICE NEEDS OF SENIORS ACT OF 2005; H.R. 804, TO EXCLUDE FROM CONSIDERATION AS INCOME CERTAIN PAYMENTS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM; S. 1047, THE PRESIDENTIAL $1.00 COIN ACT OF 2000; AND S. 190, THE FEDERAL HOUSING ENTERPRISE REGULATORY REFORM ACT OF 2005

The question is on reporting the Committee print of S. 190 as amended here to the full Senate.
The Clerk will call the roll.
The Clerk. Chairman Shelby.
Chairman Shelby. Aye.
The Clerk. Mr. Bennett.
Senator Bennett. Aye.
The Clerk. Mr. Allard.
Chairman Shelby. Aye by proxy.
The Clerk. Mr. Enzi.
Chairman Shelby. Aye by proxy.
The Clerk. Mr. Hagel.
Chairman Shelby. Aye by proxy.
The Clerk. Mr. Santorum.
Senator Santorum. Aye.
The Clerk. Mr. Bunning.
Senator Bunning. Aye.
The Clerk. Mr. Crapo.
Senator Crapo. Aye.
The Clerk. Mr. Sununu.
Senator Sununu. Aye.
The Clerk. Mrs. Dole.
Senator Dole. Aye.
The Clerk. Mr. Martinez.
Senator Martinez. Aye.
The Clerk. Mr. Sarbanes.
Senator Sarbanes. No.
The Clerk. Mr. Dodd.
Senator Dodd. No.
The Clerk. Mr. Johnson.
Senator Sarbanes. No by proxy.
The Clerk. Mr. Reed.
Senator Reed. No.
The Clerk. Mr. Schumer.
Senator Sarbanes. No by proxy.
The Clerk. Mr. Bayh.
Senator Sarbanes. No by proxy.
The Clerk. Mr. Carper.
Senator Carper. No.
The Clerk. Ms. Stabenow.
Senator Sarbanes. No by proxy.
The Clerk. Mr. Corzine.
Senator Sarbanes. No by proxy.
The Clerk. Mr. Chairman, the yeas are 11, the nays nine.
Chairman Shelby. S. 190 as amended is ordered reported to the full Senate.

Mr. SHELBY. I would like to point out another bit of irony right now. Many of my colleagues who recently complained about the process regarding consideration of this bill were some of the same people who took every measure to block all consideration of GSE reform. Actions have consequences, and in this particular instance, they were almost immediate. As soon as it was apparent that GSE reform was dead, Fannie Mae and Freddie Mac took steps to dramatically increase their risk.

The Government Accountability Office, GAO, detailed this in a September 2009 report. The GAO discovered that in 2004 and 2005, the enterprises:

. . . embarked on aggressive strategies to purchase mortgages and mortgage assets with questionable underwriting standards. For example, they purchased a large volume of what are known as Alt-A mortgages, which typically did not have documentation of borrowers' incomes and had higher loan-to-value ratios or debt-to-income ratios.

Furthermore, purchases of private-label MBS increased rapidly as a percentage of retained mortgage portfolios from 2003 to 2006. By the end of 2007, the enterprises collectively held more than $313 billion in private-label mortgage-backed securities, of which $94 billion was held by Fannie Mae and $218.9 billion held by Freddie Mac.

Recently, Daniel Mudd, Fannie Mae's former chief operating officer and chief executive officer, testified:

While the market was changing, Fannie Mae struggled to meet aggressively increasing HUD goals. The goals were extremely challenging, increased significantly every year, and permitted no leeway to account for the challenging lending environment. Certain mortgages that may not have met our traditional standards could not be ignored.

While Mr. Mudd may be correct that these mortgages aided their ability to meet their HUD goals, it also should be noted that the GAO in this same report did not see these purchases as a benefit to their mission, stating:

The rapid increase in the enterprises' mortgage portfolios and the associated interest-rate risk did not result in a corresponding benefit to the achievement of their housing mission.

Ultimately, this increased risk played a significant role in the demise of Fannie Mae and Freddie Mac.

I would like to read one final section of that 2009 GAO report here this afternoon.

According to the Federal Housing Finance Administration, while these questionable mortgage assets accounted for less than 20 percent of the enterprises' total assets, they represented a disproportionate share of credit-related losses in 2007 and 2008.

For example, by the end of 2008, Fannie Mae held approximately $295 billion in Alt-A loans, which accounted for about 10 percent of the total single-family mortgage book of business. Similarly, Alt-A mortgages accounted for nearly half of Fannie Mae's $27.1 billion in credit losses of its single-family guarantee book of business in 2008.

At a June 2009 congressional hearing, former OFHEO Director James Lockhart said that 60 percent of the triple-A rated private label MBS purchased by the enterprises had since been downgraded to below investment grade. He also stated that investor concerns about the extent of the enterprises' holdings of such assets and the potential associated losses compromised their capacity to raise needed capital and issue debt at acceptable rates.

Madam President, we all know what happened once they were unable to raise capital, but let's also remember the consequences that followed our failure to properly regulate Fannie Mae and Freddie Mac.

Charles Duhigg of the New York Times, part of a group of journalists who produced ''The Reckoning,'' a series that explored the roots of the financial crisis, wrote in 2008 that:

The ripple effect of Fannie's plunge into riskier lending was profound. Fannie's stamp of approval made shunned borrowers and complex loans more acceptable to other lenders, particularly small and less sophisticated banks.

James Lockhart supported this conclusion in his testimony before the Financial Crisis Inquiry Commission on April 9 of this year when he observed that the GSEs:

. . . indirectly encouraged lower standards by purchasing private label securities. They also encouraged lower standards by not aggressively pursuing the obligations to repurchase mortgages if they did not comply with the enterprises' underwriting requirements.

Madam President, during the debate on this bill before us, we have heard numerous times that we need to have a tighter grip on Wall Street to prevent those large Wall Street firms from harming small businesses on Main Street.

If only my Democratic colleagues had been less concerned with Wall Street's reaction in 2004 and 2005, perhaps we could have protected not only those less sophisticated smaller banks on Main Street but also the millions of consumers caught up in the resulting inflated housing market and the millions of taxpayers who have had to foot the bill for the resulting debacle. Instead, the stalling of this legislation by Democrats at that time ended any attempts of meaningful GSE reform until mid-2008, when Fannie Mae and Freddie Mac were already in serious trouble.

The simple truth is that we didn't act when we could have effected real change. Republicans were ready to enact real reform and—unfortunately for the taxpayer—Democrats were not. Let's not make the same mistake again here today.

The McCain-Shelby-Gregg GSE amendment takes several important steps to reform the GSEs. It provides transparency to the conservatorships of the GSEs by establishing much needed investigative oversight. It also requires Fannie Mae and Freddie Mac to be included in the Federal budget as long as they are in conservatorship or receivership status. It reestablishes taxpayer protections that were abolished by the Obama administration last Christmas Eve, and it requires that Congress be involved in any decision to spend additional resources to stabilize the housing markets. Finally, it establishes a definite end to the ongoing conservatorships of Fannie Mae and Freddie Mac and paves a responsible path forward by refocusing their efforts, installing proper safeguards, and untangling the U.S. taxpayer from this mess.

I urge my Democratic colleagues to ignore Wall Street and the special interests lobbying against this amendment. Join the Republicans in doing something good for the American taxpayer—support the McCain-Shelby-Gregg amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. DODD. Madam President, I ask unanimous consent that the only debate remaining on the pending Dodd and McCain amendments be 20 minutes, with 10 minutes accorded to each amendment; that upon the use or yielding back of time, the Senate proceed to vote in relation to the Dodd amendment No. 3938, to be followed by a vote in relation to the McCain amendment No. 3839, with no amendment in order to either amendment prior to the vote; further, that upon disposition of the amendments described above and as if in executive session, the Senate proceed to executive session and proceed to vote on confirmation of the following nominations in the order listed: Executive Calendar No. 704 and 729; that upon confirmation, the motions to reconsider be considered made and laid upon the table, any statements relating to the nominees be printed in the RECORD, the President be immediately notified of the Senate's action, and the Senate then resume legislative session; that after the first vote in this sequence, the remaining votes be limited to 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DODD. Well, Madam President, let me now proceed with my time. I know my colleague from Arizona will come over to be heard.

Let me emphasize again to my colleagues that the McCain amendment is opposed by the National Association of Realtors, the homebuilders, and the credit unions for the simple reason that the amendment doesn't do anything except end Fannie Mae and Freddie Mac. That is hardly reform. It replaces it with nothing, so we end up in a free fall in this country when it comes to providing affordable mortgages for middle-income families.

Granted, Fannie Mae and Freddie Mac need to be reformed, and the amendment we will vote on first off—that I will be proposing—in fact requires that the administration, by January, submit a specific plan that would call for how to reform Fannie Mae and Freddie Mac and what to replace it with in a housing financing system. Not to have a housing financing system, just to leave us without one altogether, as we would achieve with the McCain amendment, just eliminating Fannie Mae and Freddie Mac with no replacement within the year, is hardly what we need to do at this time.

We have been through a lot. This problem began in the housing market, in an unregulated segment of our economy. For years, the previous administration and others advocated a totally unregulated market. Because of those attitudes, we ended up where we did—with brokers and mortgage companies that were providing mortgages to people without any documentation, without any underwriting standards whatsoever, and we ended up, of course, with 7 million homes lost, 4 million underwater today, and 250,000 seized just in the last number of months, since the outset of this year.

The McCain amendment would actually leave us in a very fragile situation, and that is the point the homebuilders, the realtors, and the credit unions are making in their strong opposition to this amendment.

Our amendment lays out a timeframe in which the administration would have to submit a specific set of plans so we could then, in the next Congress, move forward.

As my colleague from New Hampshire has pointed out, the issue of replacing and coming up with an alternative housing finance system is very complex. There are a lot of different ideas out there about which plan ought to replace the one we have working today. Obviously that is something the Congress will have to consider.

I mentioned earlier Fannie Mae, Freddie Mac, and the FHA together account for 96.5 percent of the funding for mortgages today. The McCain amendment would undermine this supply without establishing a reasonable alternative. It is irresponsible public policy at a very uncertain time. As Senator GREGG said earlier, on the debate in the Wall Street reform bill the GSE issue is ''too complex to do in this bill.''

The McCain amendment would require the Federal Housing Finance Agency to either end the conservatorship of Fannie and Freddie or disband them, put them into receivership within 2 years. That is all. The amendment poses no alternative to Fannie Mae and Freddie Mac. It would totally privatize the mortgage market other than FHA.

We have had some experience with how the housing market behaves when it is completely privatized. It is called subprime and exotic mortgage markets. As we know, it was this unregulated market, fanned by Wall Street, that pushed out those irresponsible mortgages that they knew people could not afford which led to our current problems. With a still fragile housing market in dangerous times, the McCain amendment would push us back into this downward spiral.

The amendment would do the following. It results in an increase in mortgage rates for home buyers and homeowners. Try to explain that as you go back to your States, if this amendment were adopted. It reduces the availability of mortgage credit in communities across our country, including communities with relatively low-cost housing. This would result in reductions in existing housing values at a time when the housing market is just starting to recover some value.

Further, this amendment would reduce the availability of mortgage credit to first-time home buyers, to low- and moderate-income families seeking to buy or refinance a home by eliminating housing goals. It goes on by delaying or to put home ownership out of reach to many families. It raises the minimum downpayment requirements to 10 percent. A minimum 10 percent for families starting out, with better underwriting standards, that kind of criterion excludes a lot of young families starting out who wish to buy their first home. It reduces the availability of mortgage credit for affordable rental housing by eliminating the housing goals, and it undermines the efforts to get loan modifications and affordable refinances to homeowners trying to save their homes.

Last, it results in the potential elimination of a 30-year fixed rate prepayable mortgage.

This last point is something I do not think most Americans are aware of. We are the only country in the world that provides a 30-year fixed rate mortgage for families. That is the source of wealth creation for most Americans. It is not buying stocks on Wall Street or getting involved in fancy credit default swaps and over-the-counter derivatives and all of this casino gambling that goes on. Average Americans accumulate wealth when they can afford to buy a home and hold on to that property, watching equity increase. That equity provides a source of income for retirement years, helps provide for the college education of their kids, and equity in a neighborhood provides stability for that neighborhood and strengthens communities. If you eliminate the 30-year fixed rate mortgage, you have dealt a huge blow to working families in this country. I do not think we want to look like Europe when it comes to home mortgages, and that is how we will end up if the McCain amendment is adopted.

For all of those reasons, as I said, homebuilders, realtors, and credit unions oppose this amendment.

Reform of the GSEs—everyone agrees we need to make that reform. However, the homebuilders say in their letter to Senator MCCAIN:

> . . . we remain concerned about how to get from the current structure to future arrangements without . . . disrupting the operation of the overall housing finance system. Any changes should be undertaken with care. . . .

I agree. We should keep in mind that the Congress created a strong new regulatory regime for Fannie Mae and Freddie Mac in 2008. Their regulator is maintaining strong oversight of these enterprises, while they continue to provide crucial assistance to the housing market.

Longer term reform of Fannie and Freddie would require a thoughtful reconsideration of the structure of the whole housing finance system. This will require hearings about exactly what structure we want to put in place to finance housing in this country. This will require hearings with many stakeholders and others involved in the serious discussions to determine what that system ought to be.

To wipe out the present system—I have to tell you a quick story. It may seem unrelated to the subject at hand.

Many years ago, when I was the ripe old age of 22, I was a Peace Corps volunteer in the Dominican Republic and I went to one of the mountain villages near the border of Haiti and I asked the people what they thought their needs were. They said, What do you think we need to do, of this young American. I looked over at the old schoolhouse they had, one room, made of palm wood with a dirt floor. I said I think you need a new school. They said that is a pretty good idea. We agree with you. What should we do first? I said, first tear down the old school.

It was my first project. For the next 2 years they had no school in town. It took that long. We didn't know where to build the school. We didn't know where the property was, we didn't have the materials, so we gathered in people's homes to become the school. In effect, that is what the McCain amendment is going to do.

I made a mistake at age 22. Before deciding to build what you are going to have, don't tear down what you have without knowing what you are going to replace it with. Eventually we got a school built in that town, but they went through a rough 2 years because this young American didn't understand that while the old school wasn't great and it was in desperate need of repair, tearing it down and leaving them with no school left that little community without the ability to have a decent place to house and teach their kids. That analogy applies here because what the McCain amendment does is tear down without building anything in its place.

Again, I will take a back seat to no one. Democrats should have done a better job. Republicans—I listen to my colleague from Alabama talk about the history of Fannie and Freddie. Believe me, I have an alternative history. But we can go back and forth on that endlessly. Let's suffice to say this: We all should have done a better job at this and finger pointing doesn't get us anywhere. We are not in the business of trying to rewrite history today, we are trying to see to how best to ensure the coming generation will never have to go through what this generation has. What we are offering here is a specific idea of how to get us to that new plan of housing finance. You don't get there by eliminating what we have today and putting everything else at risk as a result of what is included in this amendment.

Under our amendment, the Treasury specifically is told not ''may'' but it ''shall'' do following things: Come up and tell us how we are going to wind down and liquidate Fannie and Freddie; the privatization of the two GSEs; the breakup of the GSEs into small companies; and other options that may be available.

This is a tough study. This isn't one to kind of paint this over; it demands a report back, ''shall,'' how specifically we can do this in a time certain. It is not perfect. I wish I had some magical reform to offer everyone today.

We have looked at this for weeks and months and there is a significant debate over what that housing financing system ought to be. I can't tell you with any certainty what is the best idea at this juncture. I know this much, to tear down what we have and replace it with nothing would be the height of irresponsibility. It would put our country's economy into a tailspin, in my view, at the very time we are beginning to come out of our difficulties—290,000 new jobs created in the last month alone. In the last previous months, 121,000 more than we anticipated. Housing starts are picking up, values are picking up again. Why at this very hour would we step back?

For all those reasons, I say respectfully, the McCain amendment I hope will be rejected by our colleagues and our substitute amendment will be supported.

I yield the floor.

The PRESIDING OFFICER (Mr. KAUFMAN). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I have been around this body for a long time. I have seen the side-by-sides. This is one of the classics that we have seen time after time. If you don't like a tough amendment, then have one that requires a study. Let's study the problem. And the purpose of this amendment as stated, and I quote from the amendment:

To require the Secretary of the Treasury to conduct a study on ending the conservatorship of Fannie Mae and Freddie Mac and reforming the housing finance system.

Reforming the housing finance system—I thought reforming the housing finance system was part of the deal here. I had no idea we were not going to reform the housing finance system when we advertised this legislation to the American people as to assure them that there would never be another financial meltdown which was caused by the housing finance system.

What does the side-by-side amendment do? It will require the Secretary of Treasury to conduct a study. Do you mean to tell me the Secretary of Treasury, after the greatest financial meltdown in history since the Great Depression, has to conduct a study? He has to conduct a study to figure out why we have just spent $145 billion, lifted the $400 billion cap at 7 p.m. on Christmas Eve? The system cries out for reform now. As is stated by literally every expert in America, it was the housing meltdown, abetted by the enablers Fannie and Freddie, that caused the financial meltdown. So we are doing nothing about it except asking the Secretary of Treasury to conduct a study. Remarkable. Remarkable.

Again I want to quote from the Wall Street Journal that says it well enough. It says:

This action confirms the decade-long congressional failure to more closely regulate these two government-sponsored enterprises will rank for U.S. taxpayers as one of the worst policy disasters in our history.

One of the worst policy disasters in our history, and we are doing nothing about it except conduct a study. That ought to do it.

I am not calling for the abolition of Fannie and Freddie. I am calling for them to stop being in the government trough. I am saying that Fannie and Freddie ought to be doing their job in competition with everybody else who finances home loan mortgages in America. The history of these organizations is replete with enabling by the Congress of the United States—including, by the way, incredible compensation for the so-called people who were supervising these organizations as they went into the tank—one of them $93 million for a year or two of supervising going farther and farther into toxic assets.

All I can say is if we pass this legislation without this amendment, do not look the American people in the eye and say we have reformed the financial system in America. Do not look the American people in the eye and say we will never again have a financial collapse in this country. Do not say we are going to turn off the spigot of Federal tax dollars—already $145 billion.

Why did the Treasury lift the cap of $400 billion that we were going to spend to help with these toxic assets of Fannie and Freddie if they didn't think it was going to be more than $400 billion?

So what are we doing in response? Sitting by and watching hundreds of billions of dollars of the taxpayers' money being used to bail out these two government-sponsored enterprises to the great cost of the American taxpayer. Again I say to my colleagues: Don't wonder why the American people are fed up. Don't wonder why the American people are in virtual peaceful revolt, when we continue to pour good money after bad, to the tune of hundreds of billions of dollars, without reforming the institutions that caused it. We are not fulfilling our responsibilities to the American taxpayers.

I am asking my colleagues, don't vote for another study. If you are going to vote against my amendment, fine, but let's not continue this charade and vote for another study.

I yield to the Senator from Alabama what time remains.

The PRESIDING OFFICER. The Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, how much time is remaining?

The PRESIDING OFFICER. There is 4 minutes 30 seconds remaining.

Mr. SHELBY. Mr. President, earlier today in the Senate I spoke about the past actions or, rather, inactions of this body that led us to the current situation with Fannie Mae and Freddie Mac. I now will take just a few minutes to discuss the current status of these institutions as Senator MCCAIN has mentioned. I will also explain the specifics of the McCain-Shelby-Gregg amendment and why I believe we must adopt it.

Since September of 2008, we have had to spend more than $150 billion to bail out these GSEs. By some estimates, this amount exceeds the total cost of the savings and loan bailouts that occurred in the late 1980s and early 1990s. Let me repeat that. Bailing out the GSEs has now cost as much or more than the entire savings and loan crisis, and it is continuing.

Having spent such considerable amounts of taxpayer dollars, one would think that the GSEs would be topic No. 1 as we consider financial reform. Unfortunately, that is not the case. As recently reported by Gretchen Morgenson, a Pulitzer Prize writer of the New York Times:

Freddie [has] warned that its credit losses were likely to continue rising throughout 2010.

Even more troubling, while the GSEs have considerable legacy problems associated with the older loans in their portfolios, they are being used by the Obama Administration to take on additional risks.

On Christmas Day of last year, the Obama administration announced it would relax important taxpayer protections at GSEs, and it would prop them up with unlimited taxpayer funding. That is exactly what they are doing today.

The administration took this step so it would have the flexibility to continue its efforts to support the housing market. Some now are questioning those efforts. In the New York Times piece I mentioned, Ms. Morgenson quotes Dean Baker, codirector of the Center for Economic and Policy Research, who noted:

I do not understand why people are not talking about it [referring to Freddie's losses] . . . it seems to me the most fundamental question is, have they on an ongoing basis been paying too much for loans ever since they went into conservatorship?

This begs the question of why the GSEs would overpay at this point. What is to be gained? Ms. Morgenson posits a rather compelling theory:

Mr. Baker's concern that Freddie may be racking up losses by overpaying for mortgages derives from his suspicion that the government might be encouraging it to do so as a way to bolster the operations of mortgage lenders.

I hope not. In the past, those huge piles of money that have consistently been spent found their way into the pockets of Democratic operatives such as Frank Raines, Jim Johnson, Jamie Gorelick, Tim Howard, and President Obama's Chief of Staff, Rahm Emanuel. Now similar piles are floating around, not necessarily to Democrats but certainly on behalf of their pet initiatives.

The only constant in either scenario has been the taxpayer has been stuck with footing the bill. I believe this afternoon this must end. It is finally time to protect the taxpayer. The McCain-Shelby-Gregg amendment will do that.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. All time has expired, I hope.

The PRESIDING OFFICER. The Senator from Arizona has 1 minute remaining.

Mr. DODD. I think it is safe to say we can yield back our time.

I ask for the yeas and nays on the Dodd amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The question is on agreeing to the Dodd 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.

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

The result was announced—yeas 63, nays 36, as follows:

[Rollcall Vote No. 139 Leg.]

YEAS—63

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

NAYS—36

Alexander	Crapo	Kyl
Barrasso	DeMint	LeMieux
Bennett	Ensign	Lugar
Bond	Enzi	McCain
Brownback	Feingold	McConnell
Bunning	Graham	Risch
Burr	Grassley	Roberts
Chambliss	Gregg	Sessions
Coburn	Hatch	Shelby
Cochran	Hutchison	Thune
Corker	Inhofe	Vitter
Cornyn	Isakson	Wicker

NOT VOTING—1

Byrd

The amendment (No. 3938) was agreed to.

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

The motion to lay on the table was agreed to.

VOTE ON AMENDMENT NO. 3839

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3839.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

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.

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

The result was announced—yeas 43, nays 56, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—43

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

NAYS—56

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

NOT VOTING—1

Byrd

The amendment (No. 3839) was rejected.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I have spoken to the distinguished Republican leader. It is my understanding we are going to do these two judges by voice vote, and following that, it is my understanding the two managers have worked out an arrangement to have a couple more amendments voted on within the next half hour or 45 minutes.

EXECUTIVE SESSION

TIMOTHY S. BLACK TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO

JON E. DEGUILIO TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nominations, which the clerk will report.

The legislative clerk read the nominations of Timothy S. Black, of Ohio, to be United States District Judge for the Southern District of Ohio and Jon E. DeGuilio, of Indiana, to be United States District Judge for the Northern District of Indiana.

The PRESIDING OFFICER. Is there further debate?

The Republican leader is recognized.

Mr. McCONNELL. Yes. I just want to address the majority leader.

I say to my friend from Nevada, we are having voice votes on two judges?

Mr. REID. Yes.

Mr. McCONNELL. Let me indicate that Senator CORKER is prepared to offer an amendment and take a very short time agreement.

Mr. REID. And Senator MERKLEY has agreed, also, and Senator KLOBUCHAR.

Mr. DODD. If I could just interject, I believe Senator BENNET, after the judges, would be prepared to speak for about 10 minutes on his amendment, and then we could have a voice vote on that amendment. We do not even need a recorded vote on that amendment. It is a bipartisan amendment.

Mr. McCONNELL. Right, and then Senator CORKER and Senator MERKLEY and a vote.

Mr. DODD. And 30 minutes equally divided, I think we are talking about, for both amendments.

Mr. McCONNELL. Yes.

Mr. REID. If we could do the judges now.

Mr. LEAHY. Mr. Presdient, this week, the President nominated Elena Kagan to the Supreme Court. I trust that her nomination will be treated better than President Obama's other judicial nominations, including these. President Obama nominated Jon DeGuilio to fill a judicial emergency vacancy in Indiana last year. He was unanimously reported by the bipartisan membership of the Senate Judiciary Committee in early March. His nomination has been held hostage for 2 months. President Obama nominated Judge Timothy Black last January, and he was reported unanimously in early February. His nomination has been held hostage for 3 months for no good purpose and with no explanation. Republican objection to their consideration has stalled both these nominations. Now that they are finally receiving votes, I suspect they will be confirmed unanimously, as have so many of President Obama's nominations. So why the delay? Why the weeks and weeks, and months and months, of obstruction? This obstruction is of nominees that Senate Republicans support. This is wrong. I have called for it to end, but the Republican Senate leadership persists in this practice.

By this date in President Bush's first term, 56 of President Bush's judicial nominations had been confirmed. Now that President Obama is in the White House, Republicans have allowed votes on only 23 of his Federal circuit and district court nominees.

The two nominations we consider today, that of Timothy S. Black to the Southern District of Ohio and Jon E. DeGuilio to the Northern District of Indiana, should have been considered and confirmed months ago. Both nominations have the support of Democratic and Republican home State senators. Both received positive ratings from the American Bar Association's Standing Committee on the Federal judiciary. Both were reported favorably by the Judiciary Committee months ago by voice vote, without any dissent—Judge Black on February 11 and Mr. DeGuilio on March 4.

As of today, there are 24 of President Obama's judicial nominations favorably reported by the Senate Judiciary Committee stalled on the Senate's Executive Calendar. The Senate has confirmed only 23, even though these nominations were reported as far back as November. Even after the Senate acts today, there will be 22 judicial nominees still pending, and 16 of those nominations were reported without a single negative vote. These should be easy for the Senate to consider in a timely manner and confirm. Yet Republicans continue to stall.

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

We should be doing the business of the American people, like reining in the abuses on Wall Street, rather than having to waste weeks and months considering nominations that should be easily confirmed. Several Senators have gone to the floor in recent weeks and have been outspoken about these delays and secret holds on judicial nominations, as well as scores of other Presidential nominations on which the Republican minority refuses to act. Regrettably, Republicans have objected to live requests for action on these nominations. They have also refused to identify who is objecting and the reasons for the objections, in accordance with the Senate rules.

The action of the Republican minority to place politics ahead of constitutional duty by refusing to adhere to the Senate's tradition of quickly considering noncontroversial nominees reminds me of the 1996 session when the Republican majority considered only 17 of President Clinton's judicial nominations. That was a low point I thought would not be repeated. Their failing to fill judicial vacancies led to rebuke by Chief Justice Rehnquist. But they are repeating this unfortunate history today, again allowing vacancies to skyrocket to over a 100, more than 40 of which have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts.

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. As I noted earlier, by this date in George W. Bush's Presidency, the Senate had confirmed 56 Federal circuit and district court judges. In the second half of 2001 and through 2002, the Senate with a Democratic majority confirmed 100 of President Bush's judicial nominees. Given Republican delay and obstruction, this Senate may not achieve 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. So far this year, despite two dozen nominations on the Executive Calendar, we have confirmed only 11 more.

The Republican pattern of obstructionism we have seen since President Obama took office has led to this unprecedented backlog in nominations on the Senate calendar awaiting final consideration. We should end the backlog by restoring the Senate's tradition of moving promptly to consider noncontroversial nominees with up-or-down votes in a matter of days, not weeks and certainly not months. For those nominees Republicans wish to debate, they should come to time agreement to have those debates and votes. It is past time to end the destructive delaying tactics of stalling nominees for no good purpose.

The confirmation of the two nominations we consider today is long overdue.

Judge Black has served the Southern District of Ohio for 6 years as a Federal magistrate judge. Before that, he spent a decade as a municipal court judge, and he also had a long career as a civil litigator. His nomination has the support of both of his home State senators, Senator GEORGE VOINOVICH and Senator SHERROD BROWN, one a Republican and one a Democrat.

Mr. DeGuilio served the Northern District of Indiana for 6 years as its U.S. attorney. In addition, he has more than a decade of experience as a lawyer in private practice, and he also worked as a local prosecutor. He has the support of both of his home State senators, Senator RICHARD LUGAR and Senator EVAN BAYH, one a Republican and one a Democrat.

I congratulate the nominees and their families on their confirmations today. I urge the Republican leadership to restore the Senate's tradition practice and agree to prompt consideration of the additional 22 judicial nominees they continue to stall.

Mr. BROWN of Ohio. Mr. President, I am here today to express my unqualified support for the confirmation of Judge Timothy Black to be U.S. district judge for the Southern District of Ohio.

I am proud to say that I worked closely with my fellow Ohioan, Senator VOINOVICH, to establish a bipartisan selection process that resulted in the selection of Judge Black as a candidate for submission to the President.

I would like to thank the members of the Southern District Judicial Advisory Commission, particularly Mr. Paul Harris, Chair, for all their efforts in vetting numerous candidates for the nomination.

Of all the candidates reviewed for this vacancy, the commission was most impressed with Judge Black. The commission recognized his leadership, his commitment to legal excellence, and temperament as qualities that make Judge Black well-suited to serve in this capacity.

Judge Black has served the Southern District of Ohio with excellence for 6 years as a Federal magistrate judge. Before that, he spent a decade as a municipal court judge, and he also had a long career as a civil litigator.

In addition to his commitment to the legal profession, Judge Black has exemplified a commitment to service through his work as a coconvener of the Round Table, a partnership between the Black Lawyers Association of Cincinnati and the Cincinnati Bar Association to improve diversity and inclusion in the legal profession.

Additionally, his valiant efforts as vice president and member of the board of ProKids, an organization that represents abused and neglected children—Judge Black's service extends beyond the judges chamber and into neighborhoods and communities in which he lives and works.

President Obama nominated Judge Black last year, stating that he has the ''evenhandedness, intellect, and spirit of service that Americans expect and deserve from their federal judges.''

Judge Black is more than ready to serve and should be confirmed without delay.

The PRESIDING OFFICER. Is there further debate on the nominations?

If not, the question is, Will the Senate advise and consent to the nominations of Timothy S. Black, of Ohio, to be United States District Judge for the Southern District of Ohio, and Jon E. DeGuilio, of Indiana, to be United States District Judge for the Northern District of Indiana?

The nominations were confirmed.

The PRESIDING OFFICER. Under the previous order, the motions to reconsider are considered made and laid upon the table, the President will be immediately notified of the Senate's action, and the Senate will resume legislative session.

LEGISLATIVE SESSION

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

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2010—Continued

Mr. DODD. Mr. President, I ask unanimous consent that the following be the next amendments in order: Bennet of Colorado amendment No. 3928; Corker amendment No. 3955; Merkley-Klobuchar amendment No. 3962, a side-by-side to the Corker amendment; that the Senate resume consideration of S. 3217; that Senator BENNET of Colorado be recognized to call up his amendment; that after his statement, the amendment be set aside and Senator CORKER be recognized to call up his amendment; that immediately after the amendment is reported by number it be temporarily set aside and Senators MERKLEY and KLOBUCHAR be recognized to call up their side-by-side amendment.

Mr. SHELBY. Mr. President, reserving the right to object, I ask the chairman, after the Corker amendment is disposed of, is it possible to bring up the Klobuchar-Hutchison amendment and have a debate and vote tomorrow?

Mr. DODD. After the side-by-side on Senators CORKER and MERKLEY—after that, I would be happy to set a time and either debate this evening and vote in the morning, however the Senators want to do it.

Mr. SHELBY. Can we agree on that, to have a vote at what time in the morning?

Mrs. HUTCHISON. Could the vote be at 9:30 in the morning?

Mr. SHELBY. Can they have a vote tonight?

Mr. DODD. I am worried about an obligation that we all have this evening. We are getting pressed. I want to be careful about asking Members to hang around when we all have an obligation—100 of us. I suggest that we enter into an agreement if we can. I am hopeful this can be worked out. There may be a side-by-side. I would be agreeable to setting a time certain tonight—preferably tomorrow, with debate tonight and a vote in the morning—maybe an hour after we come in, or a half hour after we come in. We will have to make sure the leadership is fine with that.

Mrs. HUTCHISON. Mr. President, we could certainly have 30 minutes equally divided on the Hutchison-Klobuchar amendment, and we can agree to vote 30 minutes after we come in, whatever time that is.

Mr. DODD. We will work this out. Let's get the vote here.

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

The Senator from Colorado is recognized.

AMENDMENT NO. 3928 TO AMENDMENT NO. 3739

Mr. BENNET. Mr. President, I will reserve 2 minutes for Senator TESTER out of my time.

As I mentioned earlier this week, we have an important opportunity to safeguard our economy from the conditions that drove our country into this catastrophic financial meltdown.

The Wall Street reform bill we have before us takes critically important steps forward, helping to stabilize and safeguard our financial institutions, our financial system for consumers and businesses alike. But we should not stop here. This debate must be about making the underlying bill better.

I rise today to suggest one substantial way that we can rebuild the credibility of our financial system, save taxpayers billions of dollars, and finally move to end the TARP.

Mr. President, I have an amendment at the desk, No. 3928, and I wish to call it up and ask unanimous consent to add Senator BROWN of Massachusetts as a cosponsor.

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

The clerk will report.

The legislative clerk read as follows:

The Senator from Colorado (Mr. BENNET), for himself, Mr. TESTER, Mr. ISAKSON, Ms. KLOBUCHAR, Mr. BEGICH, Mr. UDALL of Colorado, Mr. LEMIEUX, and Mr. BROWN of Massachusetts, proposes an amendment numbered 3928 to Amendment No. 3739.

The amendment is as follows:

(Purpose: To apply recaptured taxpayer investments toward reducing the national debt)

At the end of the bill, insert the following:

TITLE XIII—PAY IT BACK ACT

SEC. 1301. SHORT TITLE.

This title may be cited as the ''Pay It Back Act''.

SEC. 1302. AMENDMENT TO REDUCE TARP AUTHORIZATION.

Section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)) is amended—

(1) in paragraph (3)—

(A) by striking ''If'' and inserting ''Except as provided in paragraph (4), if'';

(B) by striking '', $700,000,000,000, as such amount is reduced by $1,259,000,000, as such amount is reduced by $1,244,000,000'' and inserting ''$550,000,000,000''; and

(C) by striking ''outstanding at any one time''; and

(2) by adding at the end the following:

''(4) If the Secretary, with the concurrence of the Chairman of the Board of Governors of the Federal Reserve System, determines that there is an immediate and substantial threat to the economy arising from financial instability, the Secretary is authorized to purchase troubled assets under this Act in an amount equal to amounts received by the Secretary before, on, or after the date of enactment of the Pay It Back Act for repayment of the principal of financial assistance by an entity that has received financial assistance under the TARP or any other program enacted by the Secretary under the authorities granted to the Secretary under this Act, but only—

''(A) to the extent necessary to address the threat; and

''(B) upon transmittal of such determination, in writing, to the appropriate committees of Congress.''.

SEC. 1303. REPORT.

Section 106 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5216) is amended by inserting at the end the following:

''(f) REPORT.—The Secretary of the Treasury shall report to Congress every 6 months on amounts received and transferred to the general fund under subsection (d).''.

SEC. 1304. AMENDMENTS TO HOUSING AND ECONOMIC RECOVERY ACT OF 2008.

(a) SALE OF FANNIE MAE OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 304(g)(2) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1719(g)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(b) SALE OF FREDDIE MAC OBLIGATIONS AND SECURITIES BY THE TREASURY; DEFICIT REDUCTION.—Section 306(l)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1455(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(c) SALE OF FEDERAL HOME LOAN BANKS OBLIGATIONS BY THE TREASURY; DEFICIT REDUCTION.—Section 11(l)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(l)(2)) is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following:

''(C) DEFICIT REDUCTION.—The Secretary of the Treasury shall deposit in the General Fund of the Treasury any amounts received by the Secretary from the sale of any obligation acquired by the Secretary under this subsection, where such amounts shall be—

''(i) dedicated for the sole purpose of deficit reduction; and

''(ii) prohibited from use as an offset for other spending increases or revenue reductions.''.

(d) REPAYMENT OF FEES.—Any periodic commitment fee or any other fee or assessment paid by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation to the Secretary of the Treasury as a result of any preferred stock purchase agreement, mortgage-backed security purchase program, or any other program or activity authorized or carried out pursuant to the authorities granted to the Secretary of the Treasury under section 1117 of the Housing and Economic Recovery Act of 2008 (Public Law 110–289; 122 Stat. 2683), including any fee agreed to by contract between the Secretary and the Association or Corporation, shall be deposited in the General Fund of the Treasury where such amounts shall be—

(1) dedicated for the sole purpose of deficit reduction; and

(2) prohibited from use as an offset for other spending increases or revenue reductions.

SEC. 1305. FEDERAL HOUSING FINANCE AGENCY REPORT.

The Director of the Federal Housing Finance Agency shall submit to Congress a report on the plans of the Agency to continue to support and maintain the Nation's vital housing industry, while at the same time guaranteeing that the American taxpayer will not suffer unnecessary losses.

SEC. 1306. REPAYMENT OF UNOBLIGATED ARRA FUNDS.

(a) REJECTION OF ARRA FUNDS BY STATE.—Section 1607 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 305) is amended by adding at the end the following:

''(d) STATEWIDE REJECTION OF FUNDS.—If funds provided to any State in any division of this Act are not accepted for use by the Governor of the State pursuant to subsection (a) or by the State legislature pursuant to subsection (b), then all such funds shall be—

''(1) rescinded; and

''(2) deposited in the General Fund of the Treasury where such amounts shall be—

''(A) dedicated for the sole purpose of deficit reduction; and

''(B) prohibited from use as an offset for other spending increases or revenue reductions.''.

(b) WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.—Title XVI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by adding at the end the following:

''SEC. 1613. WITHDRAWAL OR RECAPTURE OF UNOBLIGATED FUNDS.

''Notwithstanding any other provision of this Act, if the head of any executive agency withdraws or recaptures for any reason funds appropriated or otherwise made available under this division, and such funds have not been obligated by a State to a local government or for a specific project, such recaptured funds shall be—

"(1) rescinded; and

"(2) deposited in the General Fund of the Treasury where such amounts shall be—

"(A) dedicated for the sole purpose of deficit reduction; and

"(B) prohibited from use as an offset for other spending increases or revenue reductions.".

(c) RETURN OF UNOBLIGATED FUNDS BY END OF 2012.—Section 1603 of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5; 123 Stat. 302) is amended by—

(1) striking "All funds" and inserting "(a) IN GENERAL.—All funds"; and

(2) adding at the end the following:

"(b) REPAYMENT OF UNOBLIGATED FUNDS.—Any discretionary appropriations made available in this division that have not been obligated as of December 31, 2012, are hereby rescinded, and such amounts shall be deposited in the General Fund of the Treasury where such amounts shall be—

"(1) dedicated for the sole purpose of deficit reduction; and

"(2) prohibited from use as an offset for other spending increases or revenue reductions.

"(c) PRESIDENTIAL WAIVER AUTHORITY.—

"(1) IN GENERAL.—The President may waive the requirements under subsection (b), if the President determines that it is not in the best interest of the Nation to rescind a specific unobligated amount after December 31, 2012.

"(2) REQUESTS.—The head of an executive agency may also apply to the President for a waiver from the requirements under subsection (b).".

Mr. BENNET. Mr. President, my amendment is based on bipartisan legislation I introduced earlier this Congress called the Pay It Back Act. I was greatly encouraged at that time by the broad bipartisan support in this body for winding down the TARP, getting serious about deficit reduction, and spurring our economy back to health.

As I talk with Coloradans all across my State, I hear the same concerns again and again. People are deeply concerned and worried about the economy. They worry about jobs and they worry about our rising Federal deficit. But mostly they just want a fair shake—a chance to achieve their own vision of success through hard work.

That is why they don't understand the behavior of some of our largest financial institutions. They don't understand how these behemoths could have made bad bets, lose billions of dollars, and then be bailed out by the Federal Government. That doesn't make sense to most people in Colorado, and it certainly doesn't make sense to anybody running a business.

This pay it back amendment takes a big step forward in our efforts to wind down and eventually end the TARP. It prevents further government spending, recaptures taxpayers' investments in financial institutions, and ensures that repaid funds are used for deficit reduction.

It does this in a couple of ways. First, it reduces the TARP's authority by about $150 billion, which will ensure that unused TARP funds are not used for new government spending.

Chairman DODD's bill sends a strong message to Wall Street and our broader markets that there is no longer an implicit guarantee of government support for excessive and sloppy risk taking. This amendment reinforces this important principle by reducing TARP's authority. In short, it begins to wind down the TARP and ensures that the government doesn't use the excess funding for new spending initiatives. It is a commonsense way forward for a program whose time has come and thankfully is almost gone.

But that is not enough. As we wind down TARP, we need to make sure that taxpayers realize a fair return on their investment. That is why the second element of the Pay It Back Act amendment is that it takes captured, repaid TARP funds and applies them to deficit reduction. It does it by severely restricting TARP's revolving door of credit.

Although some companies have already repaid the money they received, TARP currently allows the Treasury to keep $700 billion "outstanding at any one time."

Let me make this clear. The Treasury has already received about $180 billion in repaid funds from banks that are now in a position to repay the taxpayers. But right now, Treasury can turn around and lend that same money to some other financial institution. It can use our money again and again. And since the TARP money is borrowed against our kids' and grandkids' futures, that is using their money again and again and again. I can tell you for sure that my daughters don't want to be stuck footing the bill for keeping the TARP around even 1 day longer than we have to. By supporting my amendment, this body can move forcefully toward ending the TARP and restoring fiscal sanity.

The amendment also creates a sunset for unused Recovery Act funds. Any funds not obligated by the Federal Government by December 31, 2012, will be returned to the Treasury to pay down the national deficit. Congress passed the Recovery Act to jolt our struggling economy back to life and help create and save jobs now. Yet, if funds have not been used by the end of 2012, can we say they have been used to ease our current recession? The taxpayers deserve to see stimulus funds used for real stimulus. If not, they should be used to pay down our debt.

The pay it back amendment sets a schedule for getting the government out of the business of owning businesses. It lets excessive risk takers know that Washington no longer provides a backstop for greed, overleveraging, reckless levels of risk, and irresponsibility. If big financial institutions want to behave that way, they must know that they do so without the TARP—without money from Main Street—to bail them out any longer.

In short, it is time for this assistance to come to a responsible end. At the heart of the Wall Street reform bill is an effort to prevent future bailouts. So let's start by finally winding down the biggest bailout of them all and making sure taxpayers get the best possible return on their money.

I thank my colleagues who are cosponsors of the bill, and I ask all of my colleagues to support this important amendment. I thank Senator DODD and Senator LINCOLN and the ranking members of the Banking and Agriculture Committees for their hard work to bring Wall Street reform to the floor.

I know the Senator from Montana wants to take a couple of minutes. I will say this. Americans have been watching the news in Europe this week, and they are seeing what is happening in Greece and the rest of Europe. If we don't think that is a canary in the coal mine, we do that at our peril. This bill will not solve our deficit and debt problem, but it takes a stand that says we are not going to leave a legacy of $12 trillion behind for our kids and grandkids.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. TESTER. Mr. President, I rise to speak in strong support of Senator BENNET's amendment to begin winding down the Wall Street bailout once and for all.

I also want to express my appreciation for Senator BENNET's effectiveness and stick-to-itiveness in working on this for some time and being able to get this through. This is a very important amendment. As Senator BENNET has said, it will not solve our debt problems, but it is a step in the right direction. I appreciate his vision and leadership.

Montanans were disgusted by the reckless actions of big, greedy Wall Street banks that brought this country to the brink of another Depression.

I voted against both the bailouts of Wall Street and the U.S. auto industry because I thought taxpayers were getting a raw deal. I don't believe in bailouts.

Why? Whether you are a family farmer or a hot-shot executive, the opportunity that allows us to fail is the same opportunity that allows us to succeed.

And America's taxpayers—Main Street small businesses and working families—should never have to pay for the sins of Wall Street.

That is why I am pleased to join Senator BENNET on this amendment to ensure that we get the maximum value for the taxpayer dollars spent through the TARP bailout.

I opposed the bailout then and I oppose it now. But at a minimum, we should recapture taxpayer investments and unused Recovery Act funds to pay down the debt.

This amendment not only achieves that but also begins to wind down TARP by reducing its authority by over $190 billion. And it prevents the Treasury from redirecting funds for other purposes.

The amendment would also establish a sunset for unused Recovery Act funds and improve oversight of unused funds.

Additionally, it would ensure that the proceeds from taxpayer investments in Fannie and Freddie are used to pay down the debt.

We have a commitment to the American people to spend their hard-earned money as wisely as we would spend our own.

Our national debt is something both parties have ignored for far too long. How do we get our arms around it?

It is going to take smart—and very tough—decisions. It is going to take working together. and it is going to take rebuilding our economy by creating jobs and new opportunities, not more taxpayer-funded bailouts.

This amendment will get things back on track to return taxpayer dollars. And to begin paying down the debt that we have inherited.

Once again, I thank Senator BENNET for his leadership.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, very briefly, I commend our colleague from Colorado for reaching out on this. The amendment is authored by the Senator from Colorado, and he has attracted good bipartisan support from Senators TESTER, ISAKSON, KLOBUCHAR, BEGICH, LEMIEUX, MARK UDALL, and BROWN of Massachusetts on how this ought to be done. The substance of the amendment is critically important. He worked with Treasury to ensure that we are responsibly winding down the TARP and getting the government out of the business of owning businesses. We can all agree with that, and I commend him for that amendment. It also ensures that unused TARP funds are used to pay down the deficit. We have heard a lot of talk about fiscal responsibility and watching what is happening in Europe and other countries and knowing the fiscal problems of those nations are the root cause of a lot of the problems they are going through today.

This amendment actually dedicates these resources to deficit reduction. I think all of us applaud his leadership on it.

There are signs our economy is recovering. In the last 3 months of 2010, our economy added roughly 187,000 jobs a month. Last year, it was 290,000 jobs, which is the largest number in over 4 years. Compare that to the first 3 months of 2009 when we were losing 750,000 jobs a month. In the first quarter, the economy grew 3.2 percent, a swing upwards of nearly 10 percent in 1 year, something many economists say is largely due to the Recovery Act. Just over a year ago, the economy was shrinking about 6 percent on an annual basis.

This amendment is tremendously valuable to this bill. We have all had discussions about it—our colleague from Georgia, Senator ISAKSON, Senator LEMIEUX, and Senator TESTER. Because of the leadership of MIKE BENNET, he has brought us to this point. I thank him immensely. I thank all of our colleagues.

I am prepared to do a voice vote, unless someone objects to a voice vote on the Bennet amendment, so we can move to finalize how we deal with the Corker amendment and the other issues before us.

Mr. SHELBY. We have no objection to the Bennet amendment.

The PRESIDING OFFICER (Mr. PRYOR). Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 3928) was agreed to.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Tennessee.

AMENDMENT NO. 3955 TO AMENDMENT NO. 3739

(Purpose: To provide for a study of the asset-backed securitization process and for residential mortgage underwriting standards.)

Mr. CORKER. Mr. President, I call up amendment No. 3955.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. CORKER], for himself, Mr. GREGG, Mr. LEMIEUX, Mr. COBURN, and Mr. BROWN of Massachusetts, proposes an amendment numbered 3955 to amendment No. 3739.

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

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

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

Mr. CORKER. Mr. President, my understanding is we have about 30 minutes on each side—is that correct—on this amendment—30 minutes on this amendment and 30 minutes on Merkley; is that correct?

The PRESIDING OFFICER. There is no order in effect.

Mr. CORKER. I know Senator ISAKSON, Senator GREGG, and Senator SHELBY wish to speak on our side.

Mr. DODD. Technically, there is no time agreement.

Mr. CORKER. I will be very brief.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I ask unanimous consent that after Senator CORKER finishes his remarks, Senator ISAKSON be recognized and then I be recognized. If Senator SHELBY wants to be recognized, he should be recognized before Senator ISAKSON. Senator SHELBY should start, then Senator ISAKSON, and then myself.

Mr. DODD. If a Member on this side somewhere in the midst of this can be heard as well——

Mr. GREGG. That would be totally reasonable.

Mr. DODD. That was not a sophisticated request.

Mr. CORKER. If we can move along on our side——

Mr. DODD. Move along.

Mr. CORKER. It sounds like there was no objection, Mr. President.

The PRESIDING OFFICER. Is there objection to the sequence the Senator from——

Mr. CORKER. To restate, Senator SHELBY, Senator ISAKSON, Senator GREGG, and then anybody else on our side.

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

Mr. CORKER. Mr. President, the Dodd bill attempts to deal with quarterly liquidation. I know there have been discussions about the pros and cons. There have been attempts to deal with the derivatives title. My sense is, before it is all said and done, there is a chance that may work out well. I think we have overly dealt with consumer protection and hope that somehow in this body we will bring that back into balance.

This bill glaringly does not deal with some of the core issues of this last crisis. We just voted on GSEs, an amendment that would have dealt with that over the next couple of years in a way that does not prescribe exactly a solution but makes sure we deal with it. We just voted it down.

Even more glaring, the Dodd bill does not deal with the essence of what created this last crisis. At the base of this crisis—an inverted pyramid—was the fact that we had a lot of loans that were written that should never have been written. Those loans were done by companies that were leveraged 30, 40, 50 to 1, and then $600 trillion worth of notional value of these loans that should never have been written were spread across the world. That, in essence, brought down our financial system.

It seems to me if we are going to do a financial regulation bill, we ought to at least deal with the core issue, which is very poor underwriting. I have offered an amendment. I know there is going to be a side-by-side. I might add, the side-by-side—and I want to make sure the people on my side know this—lets the consumer protection agency deal with underwriting, which is pretty incredible to me.

It seems to me that what we want to ensure is that the underwriting we do does not undermine the safety and soundness of our financial institutions and, therefore, should be dealt with by those regulators.

This amendment is very simple. It does some things that have been very basic to making our country strong as it relates to residential lending. Here is what it does: It establishes that there will be a minimum of a 5-percent downpayment. If I was left to my own accord, I might do something more stringent than that. It causes any loan that is written at above an 85 percent loan to value to have private mortgage insurance. It actually requests the persons's income; that this loan has to be fully documented, including credit history and employment history. It seems this is something at a minimum in this country we would like to see happen as it relates to residential lending.

Then there has to be a method for determining the borrower's ability to repay—a no-brainer—considering their debt-to-income ratio.

Those four simple requirements are put into law so we do not have the same type of underwriting problems we just had with this last episode. This does not apply to the VA. VA is an entitlement, something we have given to those who serve our country. It does not apply to rural housing. Regulators have to update the standards no less than every 5 years.

For those people who may be concerned about organizations such as Habitat for Humanity and others that use sweat equity and do not use money down, this gives the regulators the ability to exempt nonprofits that meet certain criteria on a case-by-case basis. So if there is a nonprofit in your community that is involved in allowing people to create sweat equity for housing, they would not be hurt. This requires a review of exemptions every 2 years to make sure they are within that criteria and it prohibits an exemption going to organizations that are prohibited from receiving Federal funding. We know of some of those. This also requires a study of FHA to make sure their underwriting standards are intact.

The way the Dodd bill addresses underwriting, it deals with something called risk retention on securitizations. I think most people realize that is a flawed model. It has nothing to do with the loans underneath those securities. I think Chairman DODD is even trying to find a better solution.

This bill also strikes the 5-percent retention that most people in this room think is going to actually shut down the securitization process and make less credit available, especially in the commercial areas. This, instead, puts in place a study so we can actually determine the best way to look at securitizations and know what type of risk retention should be in place.

I urge all colleagues on both sides of the aisle to do something that is real, that is substantive, that gets at the heart of this issue, that actually causes us to put in law proper underwriting standards. I cannot imagine there are many people in America who do not think this, at a minimum, ought to be done as part of underwriting home mortgages.

I yield time now to the Senator from Alabama, who may not be here. I divert and yield to Senator ISAKSON from Georgia.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. ISAKSON. Mr. President, I thank the Senator from Tennessee. I commend the Senator from Tennessee who has worked tirelessly for months on this legislation but in particular has worked tirelessly on this particular amendment.

I rise to try and make my point as strongly as I can. This body, I know, always wants to do the right thing. We want to address the concerns that made the market begin to collapse 2 years ago. We want to restore confidence in real estate finance. We want to bring back the vibrant housing industry. We do not want to reincarnate subprime loans. And we ought to do one simple thing today: We ought to learn from history. I want to give everybody a small history lesson.

The underlying bill answers the question of better underwriting by putting risk retention as a requirement on a newly originated mortgage, a risk retention of 5 percent. The tier 1 minimum capital requirement of a nationally chartered bank is 8 percent. You are going to tell me the banks of America are going to reserve another 5 percent against the mortgages they originate? No, they are just not going to originate mortgages whatsoever.

Secondly, risk retention is no insurance for a better mortgage having been made. The fact is, in the late 1980s, the American savings and loan industry, which was chartered for the purpose of financing American homes, went under, and they had a 100-percent risk retention.

What causes bad lending is bad underwriting. Risk retention has nothing to do with it if you have bad underwriting or, as we had in late 2007, 2008, 2009, no underwriting at all.

First of all, Senator CORKER's amendment is an outstanding amendment that strikes at the heart of the problem that got us here, while at the same time according the opportunity for the American finance industry to bring back competitive mortgage lending. If it is not FHA and it is not VA and it is not a Freddie Mac or Fannie Mae loan right now, you are not getting one. We do not have people in the market anymore because they are scared. There is no standard.

This brings us back to a standard of underwriting that is right. It recognizes somebody has a job, has an ability to pay, has reasonable credit, and has some skin in the game so they will pay that loan back. Historically, the default rate on the mortgage industry in the United States of America, outside the last 3 years, was around 1.2 percent to 1.4 percent—very little; in fact, probably the highest best risk investment an investor could make.

What happened was, when underwriting failed and we got into exotic instruments, when Congress told Freddie and Fannie to make affordable loans and they created market subprime loans, the genie got out of the bottle and everything failed.

I want to say to the body, if we let this bill pass with risk retention in it thinking we have done something, the only thing we will have accomplished is a total absence of mortgage money for the American home buyer and American real estate industry. That is a bad mistake.

Facts are stubborn things. If a guy has a job, makes a downpayment, he will repay his loan. If he does not, he might not.

Let's get back to the roots that got us to where we are as a great country. Let's restore home ownership and ability to finance it, but let's recognize the weakness was in underwriting. It was not in the retained risk of the originator.

I commend Senator CORKER, Senator SHELBY, Senator GREGG, Senator LEMIEUX, and the others who have worked on this issue. If this amendment fails, then this entire legislation fails in meeting the standard it set upon itself. That would be a tragedy and a mistake for the United States of America.

I yield to the distinguished Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I wish to join in congratulating Senator CORKER, Senator ISAKSON, Senator SHELBY, and others who have come together around this issue of better underwriting standards.

It is hard for me to understand why this would be resisted in this bill because this has been outlined both by Senator CORKER and by Senator ISAKSON. It was underwriting that created the problems which led our Nation to the brink of a fiscal collapse.

The way I have described it is this: What we had was an inverted pyramid. We had this situation where an individual made a loan to another individual or a corporation made a loan to an individual based on the value of a piece of property. Unfortunately, when that loan was made, it was made in a way where nobody looked at the value of the property relative to the loan and nobody looked at whether the person who was getting the loan could pay it back because the system no longer had strong underwriting standards.

Then that loan was taken and it was syndicated, it was securitized, it was synthesized, and it became multiplied, as the Senator from Tennessee said, into $600 trillion of notional value. We ended up with this huge pyramid of debt built on the basis of this loan down here at the bottom between this corporation and this individual, this loan which was based on value which was not there, and ability to repay, which was not there once the rates of the loan were reset.

Why did this happen? Why was this loan so inappropriately made? It was inappropriately made because we had a breakdown in underwriting standards. I have been through three of these events in my professional career: once in the late seventies when I was involved in representing a bank in New Hampshire, once in the late eighties when I was Governor of New Hampshire, and now. Three major financial disruptions which were created almost entirely by a failure in underwriting standards, where people were making loans that couldn't be paid back based on asset value which wasn't there. It just was aggravated radically this time because of the way the system suddenly took these loans and exploded them through the securitization process and the syndication process.

So if you are going to fix this problem, if you are going to put in place a regulatory reform system which actually fixes the issues which caused the crisis, you have to address underwriting standards. That is why the Corker amendment is so critical, because this bill does not address underwriting standards in any other way, in any significant manner. So if you are going to have a legitimate effort to try to make sure this type of an event doesn't occur again, you have to put in place underwriting standards which establish the rules of the road, which say that in the future America will not allow this sort of proliferation of lending which is not properly secured, where we know that the person getting the loan can't repay the obligation. Ironically, in this situation, these loans were made, in some instances, with the full understanding that this wouldn't happen, that they couldn't repay and the value wasn't there. Why? Because we separated underwriting standards from the process of actually making the loan. The people making loans were only interested in making a fee. They were not interested in making sure there was value of the security. They weren't interested in making sure the people could repay. They were just interested in the fee.

This should stop. The language Senator CORKER has put before us would accomplish that. It would put in place not unusual underwriting standards, not new underwriting standards, it would simply go back essentially to the types of standards—and they are not quite as strict, honestly—we had at a prior time when we didn't have this kind of risk in the marketplace because people knew when they borrowed money to buy a house they were going to have to put money down, and if they didn't put the full amount of the value down, they would have to have insurance to cover the difference. They knew their creditworthiness was going to be checked, and thoroughly checked, and their ability to pay the loan was going to be checked. So it is a totally reasonable approach.

If you are going to do one thing in this bill to avoid a future event like the one we confronted in late 2008 where basically the entire financial industry of this country almost melted down, if you are going to do one thing to prevent that event, you should adopt the Corker amendment. This should be a bipartisan amendment. I don't understand any opposition to it. I don't understand the concept which would oppose it because it is basically good banking and good lending. It is also good for the people who borrow money because they are not going to get money just arbitrarily but only if they have the value in the asset they are borrowing on and if they have the ability to repay. So I certainly hope this amendment will be approved.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SHELBY. Mr. President, I rise specifically to support the important steps the Corker amendment takes to establish sound underwriting standards for mortgages. If there is any clear message from the crisis we have been through, it is that much of what went wrong began when loans were made to individuals who couldn't repay them.

The Corker amendment makes commonsense changes. It requires minimum downpayments on mortgages, which makes it more likely that borrowers remain committed to paying their mortgages. It requires, among other things, that lenders verify a borrower's income and their ability to repay these loans. These might sound simple, but remarkably they have been overlooked by the Dodd bill. In the past, they have worked. We used to not have these kinds of problems. The Corker amendment, if we adopt this—and I urge my colleagues to vote for it—will go a long way in taking the right steps to bring common sense to our mortgage market.

Mr. CORKER. Mr. President, how much time remains of our 30 minutes?

The PRESIDING OFFICER. There is 13 minutes 40 seconds remaining.

Mr. CORKER. I yield a few minutes, if I could, to the Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

Mr. LEMIEUX. Mr. President, I wish to congratulate my colleague from Tennessee on his amendment, and I rise in support of it.

In Florida, we know this was the very problem that started this whole crisis. We called them NINJO loans—no income, no job. Underwriting standards went out the window because of the hunger of Wall Street to suck up these mortgages, to bundle them into these large securitized packages and then sell them off. So as Wall Street demanded more and more, underwriting went out the window. And what does the bank or the mortgage broker care if they can just ship off their mortgage and sell it off to Wall Street? What do they care if the person they are giving the mortgage to can't pay it back? What do they care if that person can't afford the home to start with? So we got ourselves into this perfect storm of a situation, and one of the key elements that allowed this to happen was the fact that there weren't underwriting standards.

When I bought my first home back in 1995, I didn't have 20 percent to put down; I had 15 percent. So I had to get mortgage insurance to cover the other 5 percent of my downpayment. Until such time as my family—my wife and I at the time, before we had any of our kids—could make a payoff to get the 20 percent of equity value to the loan, we had to pay for the mortgage insurance. Once we did, we no longer had to pay for that.

Well, in the late 1990s and the early 2000s, that went out the window. No longer were these underwriting standards in place. We now know, looking back on the debacle that happened in 2008, that one of the key reasons it happened, one of the key things that made it fertile for this problem to grow was the fact that there weren't underwriting standards.

What Senator CORKER does in his bill is he puts these mortgage underwriting standards back into law the way they were when everything operated the right way—a 5-percent downpayment, credit enhancement to get you to an 80-percent loan to value, fully documented income, including credit history and employment history, and a method for determining the borrower's ability to repay. All those things make common sense. But that common sense didn't prevail in the mid-2000s.

Last year, in an initiative the Wall Street Journal put forward, it talked about the 20 most important things that could be done to avert the financial collapse that happened, and the No. 1 most important thing was to strengthen underwriting standards. But this bill we are considering which is supposed to get at the problems that caused this meltdown in 2008—it is 1,409 pages long—doesn't address perhaps the No. 1 biggest reason we had a financial failure in 2008.

Senator CORKER, along with Senators ISAKSON, SHELBY, GREGG, and to a smaller extent myself, have worked on this, and I commend my colleague from Tennessee. There is absolutely no reason not to pass this. If any of our colleagues are serious about really reforming our financial system and preventing this problem from happening again, then they must support this very fine amendment.

I thank the Chair.

Mr. CORKER. Mr. President, not seeing other Senators at this time wishing to speak, I want to recap, if I could.

We spend a year and a half working on financial regulation in this body, and there are a lot of fancy things we are looking at that certainly need to be looked at, no question. We are looking at clearing trades with derivatives. We are looking at all kinds of section 106 issues and other kinds of things, many of which I have issues with. But it is amazing that after all this time, we are still not dealing with the core issue.

It is hard for me to imagine that anybody in this body would think that a 5-percent downpayment on a loan would be something that is extraordinary. This puts in place, as the other Senators have mentioned—and I certainly appreciate those who have joined me in cosponsoring. I have had a couple of folks on the other side of the aisle today come up and say: Look, this makes common sense. I am going to support this. It is amazing to me that we are not focusing on those very things that we think are the core issues.

We had a chance a minute ago to deal with Fannie Mae and Freddie Mac, and, of course, we didn't. I know it is a complex issue, but I felt the McCain amendment gave us a timeframe within which we could deal with Fannie Mae and Freddie Mac. We didn't. We decided to have another study.

But I would say to my friends on the other side of the aisle, while there is an unwillingness to deal with the issues over Fannie Mae and Freddie Mac and some of the problems that exist right now within FHFA, what this amendment would do is to put in place underwriting standards that would at least ensure the mortgages Fannie Mae and Freddie Mac are purchasing themselves would have proper underwriting standards. I think that is very important.

It is amazing that sometimes we will spend a year and a half in this body—a year, 6 months, whatever—on different types of issues, and we focus on lots of things that industry brings us, that other people bring us, but we don't get down to just the commonsense core issues that Americans know work.

I thank the Senator from Florida and others who have joined in this effort to ensure we have appropriate underwriting standards. Again, let me just recap. These are not Draconian steps. Basically, Federal banking regulators themselves—the regulators of our financial institutions—would set criteria for underwriting. There would be a minimum of a 5-percent downpayment. Any loan that is above 80 percent loan to value would have a credit enhancement—such as has been done for years in the past—of private mortgage insurance. There would be fully documented income—I can't imagine anybody in this body not thinking that wouldn't be a good idea for people taking out a loan that many people expect to pay off over a 30-year period—including a credit history and employment history. There would be a method for determining the borrower's ability to repay. This is something the regulators themselves would get together and lay out. It would also include consideration—imagine this—of the debt-to-income ratio—again, just a basic element of lending. This does not apply to VA, where we have made guarantees to veterans. It does not apply to rural housing.

For those people who may hear from some of the nonprofit organizations that I have worked with and some others in this body have worked with—I helped create one in Chattanooga in 1986 that helped over 10,000 families have decent housing—those types of organizations have the ability to be exempted if they are the types that allow people, through sweat equity and other kinds of things, to have sort of skin in the game in other ways. We applaud those efforts and applaud people who go out and volunteer and take care of their fellow citizens by helping them have homes, helping people who are less fortunate. I know all of us support that. We go to events where we thank people who volunteer in that way. This amendment does nothing other than allow them to operate as they do through exemptions through our regulators.

I know the other side of the aisle, as I mentioned earlier, has tried to deal with this issue, and they haven't figured out a way to deal with it yet. I know we have a side-by-side amendment that is coming up, and I thank those on the other side of the aisle who have put some effort into trying to do this same thing. But this, again, is a commonsense effort. And my guess is that if you laid this out in front of most citizens back home in every State we come from, they would say: You know, this is just basic. If you are going to loan money to someone, these basic underwriting standards ought to be in place.

Mr. President, I urge everyone in this body to please at least look at this seriously. This is one thing we can do that is tangible, that is not a study, that is not putting something off and hoping regulators might do something down the road. This is something tangible that we can do to ensure that the core issue that created this financial crisis over the last 24 months is dealt with and that the individual loan that is made from a lender to somebody who is borrowing money is done with proper underwriting standards in place.

Mr. President, I see the Senator from Connecticut is ready to move on to the next issue, so I yield the rest of my time, and I thank the Chair for his patience.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 3962 TO AMENDMENT NO. 3739

(Purpose: To prohibit certain payments to loan originators and to require verification by lenders of the ability of consumers to repay loans)

Mr. MERKLEY. Mr. President, I call up amendment No. 3962, the Merkley-Klobuchar amendment.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon (Mr. MERKLEY), for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr. BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN, proposes an amendment numbered 3962 to amendment No. 3739.

Mr. MERKLEY. I ask unanimous consent to dispense with the reading of the amendment.

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

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

Mr. MERKLEY. I ask unanimous consent Senator KERRY, Senator FRANKEN, and Senator LEVIN be added as cosponsors.

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

Mr. MERKLEY. Mr. President, I thank the bipartisan cosponsors of this amendment, including Senator SNOWE, Senator SCOTT BROWN, and Members on both sides—my colleague, Senator KLOBUCHAR, will be speaking in a moment—Senator BEGICH, Senator BOXER, as I mentioned, Senator KERRY, Senator FRANKEN, and Senator SCHUMER.

I would like to applaud my colleague from Tennessee. Virtually every word that Senator CORKER stated tonight is an argument for this amendment that Senator KLOBUCHAR and I are cosponsoring. I will get into the details later because I want to yield time to my colleague from Minnesota and then my colleague from Connecticut to speak to the bill. Then I will offer my remarks.

I do think it is important to recognize that the bulk of what Senator CORKER addressed goes right to the heart of this amendment as well. There is a point of distinction between the two amendments, a critical point of distinction; that is, the 5-percent underwriting absolute line. That line is a line of great concern for those of us who have had experience with first-time home buyers, those who have had experience with families who are at the bottom of the income spectrum. I should make it clear that the downpayment is only a portion of the skin in the game that such families have because there are tremendous closing costs associated with these loans that the families must bear as well. So the inflexibility of that standard is a great concern and a great point of distinction between these two amendments.

I will continue on after my colleagues have spoken to address some of the major challenges this amendment addresses, but I would like to yield 5 minutes to Senator KLOBUCHAR.

The PRESIDING OFFICER. The Senator is recognized.

Ms. KLOBUCHAR. Mr. President, I thank Senator MERKLEY for his leadership on this issue. I was proud to work with him on this issue. I thank Chairman DODD as well for advancing this amendment, for the work he has done in this area. I also want to mention my good colleague in the House, Representative ELLISON, who was a leader on this in the State legislature in Minnesota and now in Congress. We worked on this issue in this bill together.

Complex and deceitful lending practices were at the heart of the financial crisis, and as we work to reform Wall Street we must ensure that the homes and the home equity of Americans are not put at unnecessary risk. With 1 in 7 homeowners—1 in 7, who would have ever thought that—delinquent on their mortgage or already in foreclosure, and many home loans delinquent, the housing market continues to slow economic recovery.

It has been estimated that each year predatory mortgage lending results in a loss of $1.9 billion for American families. It is critical that families have access to safe, fair, and affordable mortgages.

I see my colleague from Illinois, Senator DURBIN, who has seen firsthand in his State people losing their homes, people at the mercy of call-lines where they cannot reach anyone when they are calling for help.

Important borrower protections such as those we have in Minnesota should be a national policy to help safeguard families across the country. A decade ago, just 5 percent of mortgage loan originations were subprime, meaning they were made to borrowers who would not qualify for regular mortgages—only 5 percent. By 2005 it was 20 percent of mortgages that were subprime. It was a disaster waiting to happen.

This expanded home ownership to millions of people, but it also greatly increased the risk to our financial system. In Minnesota, in 2000 there were 8,347 subprime mortgages issued. By 2005 it had increased more than fivefold to more than 47,000 subprime mortgages. However, we now know that between 60 and 65 percent of people who ended up with subprime mortgages actually qualified for traditional mortgages. We need to make sure this never happens again.

That is why last year I introduced the Homeowner Fairness Act, which is comprehensive housing reform legislation that proposes tough new national standards based on the successes of the Minnesota mortgage lending law passed in 2007. That is why I have joined Senator MERKLEY on an amendment that will ensure several key ideas from this bill are included in the Wall Street reform bill.

These are not radical ideas. The fact that practices were ever allowed to take place should be shocking to those who have not even heard about them.

First, this amendment would require all mortgage originators to verify a borrower has the ability to repay a mortgage before giving loan approval. Let me repeat that. This amendment would require mortgage originators to verify a borrower has the ability to repay a mortgage before they approve the loan. It may just sound like common sense that you wouldn't loan someone money without first figuring out if they were able to pay, but these lenders never intended to keep the loans they originated long enough for it to matter. They simply sold their risky bets to someone else and put the profits on the bank.

Second, this amendment would prohibit a mortgage originator from steering a borrower toward terms that are more expensive than those for which he can qualify. In recent years, loan originators were often paid more if they got borrowers to take out predatory subprime loans, even when the borrower qualified for a prime loan. It is important to remember that the crisis we are addressing today with this comprehensive Wall Street reform bill was first triggered by the downturn in the national housing market. This downturn brought to light the prevalence of unsound lending practices, especially predatory lending tactics in the subprime market.

Ultimately, this disregard for underwriting standards spread risk throughout the financial system as these unsound loans were securitized and sold, chopped up and sold again. No one had any skin in the game.

Although the market for some prime mortgages was less than 1 percent of global financial assets, the faults in the system that started with unscrupulous origination practices allowed the turmoil in the housing market to spill over into other sectors. When sound mortgage loans are made they provide families with a piece of the American dream. But when loans are made recklessly, without concern for the consumer, these loans become nightmares—not just for the families who are left on the hook but for our entire economy. We need to make sure those abusive and exploitative mortgage practices come to an end.

For far too long, subprime lenders have put the homes and home equity of Americans at unnecessary risk. These commonsense protections are essential to restoring our economy and preventing a future crisis in the housing market.

I ask my colleagues to support the Merkley-Klobuchar amendment, and I yield the floor to my friend and great leader on this issue, Senator MERKLEY of Oregon.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, I compliment my colleague from Minnesota for the incredibly solid and important work she has done on this topic. It goes right to the heart of building a family's financial foundations. There is a lot of movement that needs to be made to restore a framework that will build those foundations rather than destroy those foundations.

I yield to my colleague from Connecticut if he wishes to make remarks on this amendment?

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, first let me thank my colleague from Oregon and my colleague from Minnesota as well for their contribution. While he has left the floor, I would be remiss if I did not express my gratitude to BOB CORKER from Tennessee. Putting aside whatever differences we may have on this amendment, he has been a very valuable member of our committee.

This bill that is right here, all 1400 pages of it—substantial parts of this bill can be attributed to the work of BOB CORKER of Tennessee. I want my colleagues to know how grateful I am to him, to his staff, and others for some valuable ideas and thoughts. While not every one was included in the bill, he played a consistent role, showing up every time there was a meeting or gathering on this legislation. He spent a lot of hours with our colleague from Virginia, Mark Warner, particularly on titles I and II of this bill. I will say more about Senator CORKER's contribution during debate on this bill, but I wanted at least at the outset of this debate and discussion to thank him for his wonderful efforts on this legislation.

Let me begin and thank, of course, Senator MERKLEY and Senator KLOBUCHAR, as well as their other cosponsors of this, for the bipartisan support for their amendment. I will ask to have printed in the RECORD some correspondence. I have a letter we sent out in 2006. It will give you an idea—it was 4 years ago. It was signed by myself, Wayne Allard, who is no longer with us, of Colorado, Senator Sarbanes, JIM BUNNING of Kentucky, JACK REED of Rhode Island, and CHUCK SCHUMER.

The letter was pushing the regulators to establish some underwriting guidance for subprime mortgages. That is in 2006 that we sent that first letter. We were in the minority, we Democrats.

In April of 2007 we sent another letter to Chairman Bernanke. Here we said that our committee had held two hearings this year on the problem in subprime mortgage rates. This was in February and March of 2007, 3 years ago.

At the hearings, a number of committee members raised concerns that the regulators have not kept pace with deteriorating credit standards on the growth of abusive, unfair and deceptive lending practices. In addition, we are concerned that the Federal Reserve Board has not exercised its obligations under the Home Ownership and Equity Protection Act of 1994 to issue regulations that address the problems of predatory lending.

The letter goes on for two or three pages. That was signed by myself, Senator REED, Senator SCHUMER, Senator BAYH, Senator CARPER, Senator MENENDEZ, Senator AKAKA, Senator SHERROD BROWN, Senator BOB CASEY, and Senator TESTER.

In December of 2007 we sent another letter to Chairman Bernanke.

In light of the deepening crisis in the mortgage markets, a crisis you correctly attribute to abusive practices and lax underwriting standards in the subprime market, we want to reiterate to you the importance of acting forcefully to protect consumers in the rulemaking the Federal Reserve Board is currently undertaking under the Homeowners Equity Protection Act.

We go on for two or three pages. Again, I say respectfully, but not a single member of our committee from the other side signed that letter or the one in April of 2007. This letter was signed by myself, Senator JOHNSON, Senator REED, Senator SCHUMER, Senator BAYH, Senator CARPER, Senator MENENDEZ, Senator AKAKA, Senator BROWN, Senator CASEY, Senator TESTER, and Senator JOHN KERRY of Massachusetts.

Those are just three pieces of correspondence going back years ago, trying to get some attention to the predatory lending practices that were going on. Had we acted in 2006 or even in 2007, we would not even be close to the disastrous effects that have occurred with 7 million homes lost, 4 million today underwater in the country—in danger of falling into foreclosure, 250,000. A quarter of a million homes this year have been seized in foreclosure proceedings. Here were three pieces of lengthy correspondence signed, in one case on a bipartisan basis in 2006; in 2007 unfortunately on a partisan basis—not because we didn't seek additional signatures on the letter—to highlight the importance of underwriting standards and the need to step up.

I also want to add at this point a letter from the National Association of REALTORS, expressing strong opposition to the Corker-Gregg amendment. In their letter to the Senate—to all Senators, this letter went—they say the following.

The Corker-Gregg-Isakson amendment replaces the risk retention provisions . . . of the credit risk retention with a study on a feasibility of risk retention requirements for financial institutions and implements the residential mortgage underwriting standards that include a mandatory 5 percent downpayment for all mortgages. As our Nation continues to recover from the worst economic downturn since the Great Depression, REALTORS are cognizant that lax underwriting standards brought us to this point. It must be curtailed. However we caution that swinging the pendulum too far in the opposite direction may reverse the fragile recovery.

Based on data from the National Association of REALTORS, of home buyers and sellers, 11 percent of all home purchasers surveyed had downpayments of 5 percent or less. When considering only first-time home buyers, the percentage utilizing a downpayment of under 5 percent increases to 18 percent of all purchases. Improving underwriting to ensure that the consumer has the ability to pay their obligation is in the best interests of everyone, but eliminating the possibility for some creditworthy customers to buy a home will have significant detrimental ramifications for American families, the housing sector, and those businesses that support it.

Let me take a couple of minutes. I know my colleague from Texas is here, and others, but this is important, that people understand what happened. Because 5 percent sounds pretty reasonable. Why not 5 percent? Let me explain why that provision poses some risk to all of us. The Senator's amendment as offered has two parts to it. They almost kind of run into each other in a way.

The first half of the amendment strikes the government-imposed risk retention requirements in the underlying bill. These requirements, as explained before, and I will in a second again, would result in strong market-based underwriting standards in the residential mortgage market.

Then in the second half of the amendment, the amendment puts in government-dictated, hard-wired underwriting standards that would have very serious consequences, as the National Association of Realtors points out, for first-time home buyers, minority home buyers, and others who are seeking to attain the American dream of home ownership.

Like the earlier debates we have had, it does this at a time, as we all know, that the housing markets are just starting to recover, potentially putting that recovery at risk.

Let me start by discussing the first part of this amendment. The bill, section 941 of our bill, requires securitizers to retain an economic interest in the material portion of the credit risk for any asset that securitizers transfer, sell, or convey to a third party. What does this mean? Very simply put, it is skin in the game. Skin in the game—a skin-in-the game requirement that creates incentives that encourage sound lending practices, restores investor confidence, and permits securitization markets to resume their important role as a source of credit for households and businesses.

Excesses and abuses in the securitization process played a very major role in this crisis under what is called the ''originate to distribute'' model. Loans were made expressly to be sold into the securitization pools, which meant the lenders did not expect to bear the credit risk of borrower default.

What does that mean? Well, if you are the broker out cutting the deal, what was the first piece of advice on their Web page to the brokers, the unregulated brokers? The first piece of advice to them was, from their association: Convince the borrower. Convince the borrower you are their financial adviser.

Well, of course, they were anything but their financial adviser. Their job was, of course, to get people to sign up and commit to these mortgages, which they knew, in too many cases, could never, ever be met; that is, they, the borrower, would never possibly meet it.

If you had some skin in the game if you are the broker, you may be a little more careful about that. But, of course, the broker was acting on behalf of the lending institutions. Now you think, well, the lending institution is going to care about this. You know, when I bought my first home back X numbers of years ago, my mortgage stayed at the Old Stone Bank. I signed those papers. I could go down every day and I could pull out that drawer, wherever it was, and look at my mortgage. It did not leave the Old Stone Bank. It stayed right there.

Let me tell you, that fellow at the Old Stone Bank wanted to make darn sure that this young lawyer in Connecticut was going to meet his financial obligations. So they had underwriting standards for me. It did not cost me a lot on a downpayment. I was a new buyer, first-time home buyer. I had just gotten licensed to practice law in Connecticut, so they had a little confidence I might be able to meet my obligations. So they had underwriting standards.

Today it is vastly different. That fellow, a young lawyer today, who goes and gets that mortgage, the lending institution frankly could care less whether you have the underwriting standards. Why? Because it is going to sell that mortgage. That is what securitization is: I am going to sell it. On average they hold your mortgage 8 to 10 weeks. Then they sell it. It goes right out the door. So the broker could care less. He got me to sign up with a deal I could not afford. The old bank does not care anymore, because they are selling it, and bundling them together and shipping them out the door, and some unwitting investor may be purchasing these. Because they have been branded by the rating agencies as AAA or AA, they think they are pretty good.

So why am I putting skin in the game? Because if you do not have skin in the game, if you do not have a vested interest financially in the outcome, you do not care what happens, unfortunately, in too many cases. You have been paid. You have got out your dollar. You have been compensated as the broker; you have been compensated as the lending institution; you wash your hands of the whole thing.

That is what created this domino effect, because there were not people watching and caring what went on. So in my bill I said: Well, why not keep a little skin in the game or drop the skin in the game but write underwriting standards. You make the choice. But if you have got skin in the game, I suspect you are going to be careful about underwriting standards. If you write the underwriting standards, I do not want to take a pound of your flesh from the lending institution, if you are going to meet those obligations.

That is exactly what Senator MERKLEY and our colleague from Minnesota and others are suggesting here: Let's get good underwriting standards here. That is why I support what they are talking about. So I apologize for going into all of that ''originate to distribute,'' but originate the mortgage to distribute it. That is exactly what it means.

This led to significant, of course, deterioration in credit and loan underwriting standards, particularly in residential mortgages. With the onset of the crisis, there was widespread uncertainty regarding the true financial condition of holders of asset-backed securities, for obvious reasons, freezing interbank lending, constricting the general flow of credit. Complexity and opacity in the securitization markets prolonged and deepened the crisis, and it made recovery efforts that much more difficult.

My proposal in the bill has a measured approach which requires, of course, separate rulemaking requirements for different assets. I will not bother you with all of that.

A lot of people support this, by the way, including the Consumer Federation of America, the Investors Working Group, the America Securitization Forum, CalPERS, the Group of 30, even a former Republican Secretary of the Treasury, John Snow. And he says:

Because of the lack of participant accountability, the originate-to-distribute model of mortgage finance, with its once great promise of managing risk, became itself a massive generator of risk.

A study is not a credible response. I say that respectfully of the amendment of the Senator from Tennessee. He calls for a study in all of this. Our bill provides for comprehensive regulation of securitization markets, to prevent excesses and eliminate a potential source of financial instability.

Let me add quickly, I am a strong supporter of securitization. That has provided liquidity, which has made home ownership more available to more people. But you have got to do it carefully. If you are packaging these mortgages with no regard to whether they are available, and sending them out the door to be sold off, then you jeopardize securitization. If you get good underwriting standards, as the Senator from Oregon and Minnesota are requiring, then you are going to build in some safeguards; then securitization, with proper branding of what they are worth, and you are back on track again, and we can start to see housing improve for everybody.

The Corker amendment also requires, of course, here a 5-percent downpayment for all loans, no matter what the circumstance. That is a government-mandated requirement in a sense in this amendment. Even with FHA loans, hardwiring in statutes that as a requirement is very ill-considered, I would say.

The key cause of the crisis, as I have said many times over the past almost 4 years on the floor of this body, was the unscrupulous mortgage brokers and mortgage lenders who sold unaffordable mortgages to people who could not pay those mortgages.

In the majority of the cases, those loans were refinance loans, they were not even original mortgages. It was refinancing. No downpayments are required in refinancing at all. Downpayments did not even come up or come into play for these borrowers. But the mortgages were still outrageous and unaffordable. They still led to the foreclosures and contributed to the economic crisis we are in.

Why was this? Well, it was because the brokers and bankers had no skin in the game. So they not only did not pay attention, in too many cases they did not even care whether the borrowers had the ability to pay back those loans. The Merkley-Klobuchar amendment specifically addresses this problem, by specifically requiring that lenders take into account the borrower's ability to pay, and laying out important criteria for determining that.

It will end the steering payments that caused so much of the trouble in the first place. And while the 5-percent downpayment may sound reasonable, and in some cases it is, there are many lending programs out there that allow for downpayments that are lower than 5 percent: FHA, which is struggling now, has traditionally allowed for downpayments less than 5 percent. FHA has been a path to home ownership, as we know, for millions of our fellow citizens. Many nonprofits such as Habitat for Humanity, the Enterprise Foundation, church-related housing groups—in fact, I have a letter signed by a number of these nonprofit organizations in opposition to the Corker amendment. I ask unanimous consent that all these letters I have referred to be printed in the RECORD.

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

NATIONAL ASSOCIATION
OF REALTORS®,
Washington, DC, May 6, 2010.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of more than 1.1 million members of the National Association of REALTORS® (NAR) involved in residential and commercial real estate as brokers, sales people, property managers, appraisers, counselors, and others engaged in all aspects of the real estate industry, I respectfully request that you oppose the Corker-Gregg (#3834) and the McCain-Shelby-Gregg (#3839) amendments to S. 3217, the Restoring American Financial Stability Act of 2010.

CORKER-GREGG-ISAKSON AMENDMENT

The Corker-Gregg-Isakson (#3834) amendment replaces the risk retention provisions of S. 3217, Title VII, Subtitle D, (b) Credit Risk Retention—with a study on the feasibility of risk retention requirements for financial institutions and implements residential mortgage underwriting standards that include a mandatory 5% down payment for all mortgages. As our nation continues to recover from the worst economic downturn since the Great Depression, REALTORS® are cognizant that lax underwriting standards brought us to this point, and must be curtailed. However, we caution that swinging the pendulum too far in the opposite direction may reverse our fragile recovery.

Based on data from NAR's 2009 Profile of Home Buyers and Sellers, 11% of all home purchasers surveyed had downpayments of 5% or less. When considering only first-time homebuyers, the percentage utilizing a downpayment below 5% increases to 18%. Improving underwriting to ensure that the consumer has the ability to repay their obligation is in the best interest of everyone, but eliminating the possibility for some creditworthy consumers to buy a home will have significant detrimental ramifications for American families, the housing sector and those businesses that support it.

MCCAIN-SHELBY-GREGG AMENDMENT

The McCain-Shelby-Gregg (#3839) amendment, which creates Title XII to S. 3217, places Fannie Mae and Freddie Mac on the fast track to dissolution. REALTORS® believe that reform of these institutions, that have played a pivotal role in the evolution of the U.S. housing market, is necessary; however, now is not the time for drastic action. Especially, considering their current role in stabilizing the housing market, and that the McCain-Shelby-Gregg amendment does not offer a replacement to fill the enormous gap that the shuttered GSEs will leave.

As NAR mentioned in our testimony before the House Financial Services Committee, March 23rd, 2010, on the ''Future of the Housing Finance,'' the transition of these organizations to their new form must be conducted in a fashion that is the least disruptive to the marketplace and ensures mortgage capital continues to flow to all markets in all market conditions. The establishment of aggressive timetables for the GSEs to return to profitability, prior to the full recovery of our nation's economy and housing market, predisposes them to failure, and will cause significant angst for homebuyers and the nation's housing markets.

Furthermore, the requirements that this amendment places on Fannie Mae and Freddie Mac, when they become viable, will effectively prohibit them from participating in the secondary mortgage market.

First, the aggressive reduction of their portfolio will prevent them from being an effective buffer during future economic downturns. A key element of NAR's recommendation for the restructure of the GSEs is that their portfolios should only be large enough to support their business needs and ensure a stable supply of mortgage capital when necessary because of insufficient private investment. The requirements established in this amendment would thwart the GSEs ability to be an effective buffer.

Second, the amendment repeals all increases to loan limits, both permanent and temporary. The loan limits would return to: $417,000. Moreover, the GSEs would be prohibited from purchasing homes that had prices over the median-home price, for properties of the same size, for the area in which the property was purchased. This would reduce loan limits to less than $100,000 in some areas, less than half the current FHA floor.

NAR advocated for the increase of the loan limits for high cost areas and is actively advocating that the current limits be made permanent in order to ensure that creditworthy homebuyers have access to affordable capital. The housing market remains fragile, and private capital has not returned to either the mortgage or MBS markets to the extent that is needed to support the housing industry. Reducing the GSEs' loan limits to the suggested levels will significantly limit the ability of homebuyers to obtain mortgage funding throughout the country, and damage the business sectors supported by mortgage finance.

Third, the amendment establishes an escalating mandatory down payment percentage that REALTORS® believe unfairly and unnecessarily denies the opportunity to many families who have the potential to succeed as homeowners. Beginning 1-year after the 24-month assessment period, the minimum down payment requirement will be 5%. 2-years out, the down payment will be 7.5%. After three years, the down payment will be 10% for conventional-conforming loans.

The removal of flexible down payment options will significantly reduce the ability of creditworthy consumers to purchase a home. As mentioned with regard to the Corker-Greg-Isakson amendment, a 5% down payment requirement excludes 11% of all current homebuyers and 18% of all current first-time homebuyers, based on NAR's most recent homebuyers survey. Increasing the down payment to requirement to 10% would exclude nearly 25% of all current creditworthy borrowers, and up to 37% of current creditworthy first-time homebuyers. Underwriting standards have already been corrected and loans are only available for borrowers who can afford them. There is no reason to over-correct by imposing higher downpayment requirements.

As we have seen, without the GSEs, the current crisis would have been even more catastrophic for the housing market and the overall economy, as virtually no activity would have occurred within the housing sector because little private capital would have been available. REALTORS® support reforming our housing finance system, and the GSEs. However, taking a measured approach is critical to ensuring that our economic recovery remains viable.

I appreciate the opportunity to share with you the views of more than 1.1 million real estate practitioners respectfully request that you oppose the McCain-Shelby-Gregg (#) and the Corker-Gregg-Isakson (#) amendments to S. 3217, the Restoring American Financial Stability Act of 2010.

Sincerely,

VICKI COX GOLDER,
2010 President, National Association of REALTORS®.

MAY 11, 2010.

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

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

DEAR CHAIRMAN DODD AND SENATOR SHELBY: We write in opposition to amendments to the Restoring American Financial Stability Act that would mandate a one-size-fits-all approach to mortgage underwriting and those amendments that would undercut the current mortgage finance system by eliminating Government Sponsor Enterprises (GSEs) without having a successor system in place.

Certain amendments currently being considered, such as a mandatory 5 percent down payment requirement, would undermine successful first-time homebuyer and workforce housing programs offered by qualified nonprofits and state and local governments. Unlike the broader mortgage market, these nonprofit and government sponsored lending programs require borrower financial education and have very low default rates. For example, the program administered by NYC's Department of Housing Preservation and Development had only five foreclosures out of 17,000 loans. The reason is that programs such as these utilize stringent underwriting standards that were lacking in some segments of the mortgage finance market. Yet, local government and nonprofit loan programs would be virtually eliminated by a national mandate for a 5 percent down payment because these programs utilize alternative down payment requirements to ensure that the homebuyer has "skin in the game." For example, self-help homebuyer programs allow hours spent in building homes to compensate as part of the down payment. Other programs require extensive financial literacy, including pre- and post-purchase counseling, and state or local government issued loans coupled with sound underwriting standards that have proved successful in enabling low income and workforce families to achieve the American dream of homeownership, build wealth, and remain in their homes.

Moreover, buyers who receive financial literacy training and homeownership counseling with traditional loan products, irrespective of the down payment percentage, are critical to our nation's ability to address the foreclosure crisis and stabilize the housing market. A one-size-fits-all approach and flat down payment amounts eliminate the ability for local communities to rely on the experience and strong track records of local non-profit and government lenders who have built successful homeownership programs that did not contribute to the housing crisis.

In addition to avoiding flat down payments and federally mandated underwriting standards, we also believe that Congress should employ a thoughtful and analytic approach to examining the role of the two Government Sponsored Entities (GSEs) in the mortgage crisis and what the future of the U.S. mortgage finance system should look like versus an immediate wind down of both GSEs. We urge Congress to ensure that a successor system is in place prior to dissolving the two firms. The GSEs have provided critical capital to the housing market, ensuring that more Americans can benefit from homeownership. Though we must be careful only to extend mortgage loans to those who can afford to pay the loans over the life of the mortgage, we must be equally careful not to cut off mortgage lending at a time when the markets are recovering.

The problems in the housing market were caused by a confluence of factors. We must address all of them, instead of singling out one or two reasons or entities, and, inadvertently, making homeownership unattainable for many working families.

Thank you for taking the time to address these concerns.

Sincerely,

Enterprise Community Partners; National NeighborWorks Association; Habitat for Humanity International; Community Resources and Housing Development Corporation; National Community Reinvestment Coalition; Kalamazoo Neighborhood Housing Services, Inc.; Nuestra Comunidad Development Corporation; Manna, Inc; Community Frameworks; UNHS NeighborWorks HomeOwnership Center; Frontier Housing, Inc.; Boston LISC; Chicago LISC; Connecticut Statewide LISC; Duluth LISC; Houston LISC; Jacksonville LISC; Los Angeles LISC; Mid South Delta LISC; New York City LISC; Philadelphia LISC; Pittsburgh Partnership for Neighborhood Development (SWPA LISC); San Diego LISC; Toledo LISC; Virginia LISC; Impact Capital (Washington State LISC); Local Initiatives Support Corporation; Housing Assistance Council; Homes for America, Inc.; Housing Partnership Network; Neighborhood Housing Services of Phoenix; Cambridge Neighborhood Apartment Housing Services; NHS of the Lehigh Valley, Inc.; NeighborWorks Columbus; Ithaca Neighborhood Housing Services; Knox Housing Partnership; NHS of Orange County; Buffalo LISC; Greater Cincinnati & NE Kentucky LISC; Detroit LISC; Hartford LISC; Indianapolis LISC; Greater Kansas City LISC; Michigan Statewide LISC; Milwaukee LISC; Greater Newark & Jersey City LISC; Phoenix LISC; Rhode Island LISC; San Francisco Bay Area LISC; Twin Cities LISC; Washington DC LISC.

Mr. DODD. These are groups, it appears that, in fact, I should say in fairness to Senator CORKER, in the latest version of his amendment, that allows for some exceptions on a case-by-case basis of these nonprofits, where each individual nonprofit has to go to the regulators for such an exemption. But they simply may not get it. They get to apply. It is optional to give that.

Many insured depositors, of course, have mortgage programs that require less than 5-percent downpayments. They are performing well, and have done so in the past. And we want low- and moderate-income families to go to banks and get loans, qualified low- and moderate-income people to have to meet those standards. We do not want to simply shut them off to nonprofits. We want to get them into the financial mainstream.

The Corker amendment would create a new barrier to accomplishing that goal. But the Merkley-Klobuchar amendment provides for those underwriting safeguards, does not put such tight restrictions, even on FHA mortgages, that would make it impossible for an awful lot of people.

I thank my colleagues. I have spoken a long time here. I apologize. But I think it is important to know the history of how we got into the mess and what happened out there that led us to these difficulties, why underwriting is important.

What Senator MERKLEY and Senator KLOBUCHAR have offered is to get back to that sensible requirement here without writing these stringent requirements in this legislation that would be so difficult. So I urge my colleagues to support the Merkley-Klobuchar amendment and respectfully oppose the Corker amendment.

By the way, their amendment is endorsed by a number of our colleagues on both sides of the aisle. I thank Senator SCOTT BROWN of Massachusetts, who is involved with this amendment, by Senator MERKLEY and others. I commend him for it. It is a good proposal.

The PRESIDING OFFICER (Mr. UDALL of Colorado.) The Senator from Rhode Island.

Mr. WHITEHOUSE. May I interject myself in this debate for 1 minute to ask unanimous consent with respect to the Whitehouse amendment that restores States rights to protect against exorbitant, out-of-State lenders doing business in one's own State.

I ask unanimous consent that Senator COCHRAN of Mississippi be added as a cosponsor. I want to take a moment to let him know how much I appreciate his cosponsorship of what is now a bipartisan amendment, and I look forward to continuing to secure additional sponsors from both sides of the aisle.

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

The Senator from Oregon.

Mr. MERKLEY. Mr. President, before I speak on this amendment, I want to applaud my colleague from Connecticut who spoke so passionately and knowledgeably about the challenge that had been faced by subprime underwriting gone astray.

If only the letters that he and his colleagues wrote in 2006 and in 2007, those multiple appeals, if only those who had the power to establish those underwriting standards had been listened to, had been followed up on, then we would have a much smaller challenge today. We would not have had this big meltdown in 2008 and 2009, with so many millions of American families having the value of their home destroyed. I applaud him for his advocacy year after year after year.

I am pleased to be able to join him in this effort now. I particularly applaud the efforts to establish standards for skin in the game. This is a very responsible way to create accountability for our mortgage originators. I do want to note that there are three issues that particularly contributed to dysfunction at the retail mortgage level.

The first is liar loans, undocumented income, where a mortgage originator would tell the client: Well, we will just pencil in here that you earn $150,000. It does not matter. Don't you worry about what you are earning. We will put this in here. That obviously led to a complete corruption of the quality of the mortgage. Certainly the families involved had no prospect of paying for those mortgages and the interest rates they were being signed up for.

A second was to fail to employ basic underwriting measures, measures like loan to value and credit history and employment history, and current obligations and debt to income, and so forth.

These are the types of measures any responsible originator goes through to understand whether this loan makes sense for this family, whether there will be the ability to repay.

The third piece is the incentives that were provided to mortgage originators put those originators 180 degrees out of sync with their customers. Essentially, it worked like this. If a loan was good for a family, it didn't make as much money for the lender. If it was bad for a family, it made a lot of money for the lender. So the lender and the home buyer have different interests; one wants a low-interest mortgage, a fair mortgage; the other wants a mortgage that has hidden clauses, prepayment penalties, and exploding interest rates. But incentive payments, sometimes called steering payments, technically called yield spread premiums—these were paid to the mortgage originators to induce them to sign those families they had taken into their trust into a loan that was good for the lender but not good for the family, corrupting a transaction at the heart of the most important financial moment in a family's experience, the moment of buying their family home.

This amendment addresses all three of these core pieces of dysfunction in the mortgage market. It ends no-documentation or liar loans as they are called, where income is created like writing a work of fiction. It sets minimum underwriting standards related to loan to value, ability to repay, and ability to repay not based on some teaser rate but on any rate the loan could potentially go up to in the first 5 years. So you make sure, if this has a variable rate clause, that this family will be able to manage those payments in the first 5 years and certainly verification of income in the process. So you have documentation and verification, essentially the sound underwriting process that was in place for decades before it all went awry over the last 10 years.

This amendment will apply to all loans. It amends the Truth in Lending Act or TILA, which applies to all loans. It will base broker compensation on the size of the loan and on the loan value or the loan amount and the volume of loans a broker makes, rather than on the type of loan. We take this impossible situation that mortgage originators were put in, where their interests were 180 degrees reversed from the client. Yet it is a trust relationship, it puts them in sync, where the broker has no incentive to steer a family into an exploding interest rate, no incentive to steer a family into a loan with a prepayment penalty, no incentive to steer a family into a loan that has other hidden clauses designed to strip wealth from working families.

Finally, this amendment provides a safe harbor to make sure mortgage originators are on sound ground if they follow this set of originating principles and, in the process, makes sure they do not do balloon payments or fees that exceed 3 percent, a series of sound business practices that serve the industry and serve the family.

I mentioned before that my colleague from Tennessee has a bill that has many of these mortgage underwriting standards. I applaud him for his long experience and concern in helping families to succeed. But we do disagree about two provisions. One provision is stripping the skin in the game that makes sure mortgage originators have a stake in the quality of the mortgage. The second is to establish a solid line on a 5-percent standard. Many families, when they are buying a modest home, have a significant expenditure in all kinds of closing costs, independent of their downpayment. They may well have thousands of dollars, $5,000, $8,000 of skin in the game before they ever get to the downpayment. So we want to create the flexibility for first-time home buyers and for families on the lower end of the income spectrum to be able to get into home ownership.

In fact, frankly, it is these families for whom it is so important we make the mortgage process available. Because a young family who is able to buy that first home and do so with the responsible underwriting principles laid out in this amendment, in 5 years they will be buying their second home, maybe a bit nicer home, maybe an extra bedroom or two for the children, and maybe later on they are able to move up again to the sort of home they have always dreamed about having or the sort of yard with the trees in it that the treehouse is going into and so forth. That is the American dream, to be able to engage in this progression. You engage in that progression because you build equity. You build equity by getting into home ownership at the start. Having solid underwriting standards but not an inflexible line is the way to go on this.

I do note that the amendment Senator KLOBUCHAR and I are offering is supported by a host of organizations: The Center for American Progress, the Center for Responsible Lending, the National Association of Consumer Advocates, the National Consumer Law Center, the National Fair Housing Alliance, Consumer Action, the Housing Finance Alliance, and Mortgage Insurance Companies of America.

This is a bipartisan sentiment to restore solid mortgage underwriting standards. I appreciate the thoughtfulness and energy that has gone into it from both sides of the aisle to craft ways to approach this. When we vote tomorrow morning, I ask all my colleagues to vote yes for strong underwriting standards. Vote yes for putting mortgage originators in sync with their clients rather than radically oppose the interests of their clients. Vote yes to end liar loans. Certainly, vote yes for the young families and those families with lower income who wish to get into that first home so they can get their share of the American dream.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 3759, AS MODIFIED

Mrs. HUTCHISON. Mr. President, I rise to talk about the Hutchison-Klobuchar amendment, which will be in order after votes on the Merkley and Corker amendments. The votes will come tomorrow, but my colleague, Senator KLOBUCHAR, and I are very concerned about the underlying bill only putting Fed supervision over bank holding companies that are $50 billion and above. One of the key parts of regulatory reform in this financial arena is that nobody wants too big to fail anymore. My colleague, the cosponsor of this amendment, and I wish to assure there is no indication in any way that only bank holding companies that are $50 billion and above would be having supervision of and access to the Fed.

We want to make sure of two things. First, that there is a level playing field, that everyone who wants to be a member of the Fed, who wants to have access to the Fed, will be able to do that, including State banks.

The underlying bill would prohibit State banks from being able to be members of the Fed. That is a real concern for community bankers all over America. The second concern is that we have regional Feds. When the Federal Reserve was established, there was a debate about whether we would have regional offices or whether there would just be the Federal Reserve Board sitting in Washington. The decision was made to have Federal banks in key parts all over the country that would be regional banks. The purpose was that we needed to know what was happening all over the country, not only in New York, not only in Washington, DC, but throughout the country, because it is the community banks that are the depository institutions that are the mainstay of our economy and our financial community. If you take the Federal Reserve supervisory authority away from all those community banks around the country and regional banks no longer have input into what is going on in smaller communities, we will have too big to fail in reality, and we will also have a monetary policy that is going to cater to the big financial institutions, which are what utterly failed in the last 2 years in the financial meltdown.

Senator KLOBUCHAR and I have an amendment that would go back to where we are today, that the Fed would have supervisory power over State banks that choose to go into the Fed, and it would be universal for all the holding companies and the banks in the system.

Before my colleague from Minnesota speaks, I wish to submit for the RECORD a couple letters that have been written, one by the Independent Community Bankers of America.

Dear Senator,

On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I write to urge your support for an amendment to S. 3217 to be offered by Senators Hutchison and Klobuchar . . . that would restore the Federal Reserve's authority to examine state-chartered community banks and small bank holding companies.

That is the amendment we are discussing tonight.

I ask unanimous consent to have this letter printed in the RECORD.

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

INDEPENDENT COMMUNITY BANKERS OF AMERICA®,
Washington, DC, May 6, 2010.

DEAR SENATOR: On behalf of the nearly 5,000 members of the Independent Community Bankers of America, I write to urge your support for an amendment to S. 3217 to be offered by Senators Hutchison and Klobuchar (#3759) that would restore the Federal Reserve's authority to examine state-chartered community banks and small bank holding companies.

The Federal Reserve System comprises 12 regional Federal Reserve Banks overseen by a Board in Washington. The virtue of this structure is that it prevents the Federal Reserve from being focused exclusively on the power-centers of Washington and New York. Through their examination of state-chartered community banks and bank holding companies, the regional Federal Reserve Banks keep their finger on the pulse of a diverse range of institutions in diverse regional economies and the Main Street small businesses and municipalities served by these institutions. As Chairman Bernanke has testified, the Federal Reserve's authority gives them insight into what's happening in the entire banking system. This insight is crucial not only to the Federal Reserve's exercise of its monetary functions, but to its ability to gauge the impact of banking regulations across diverse institutions.

The Federal Reserve must be the central bank of the United States, not the central bank of Wall Street and a handful of too-big-to-fail institutions. Your support for the Hutchison/Klobuchar amendment will help ensure that the Federal Reserve serves the entire economy.

Thank you for your attention to this matter.

Sincerely,

CAMDEN R. FINE,
President and CEO.

Mrs. HUTCHISON. I also will include a letter from the Chamber of Commerce of the United States of America, signed by the executive vice president.

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports an amendment expected to be offered by Sens. Hutchison and Klobuchar to S. 3217 . . . which would maintain Federal Reserve Board oversight of state member banks and smaller holding companies.

I ask unanimous consent to have this letter printed in the RECORD.

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

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, May 6, 2010.

TO THE MEMBERS OF THE UNITED STATES SENATE: The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly supports an amendment expected to be offered by Senators Hutchison and Klobuchar to S. 3217, the ''Restoring American Financial Stability Act of 2010 (RAFSA),'' which would maintain Federal Reserve Board oversight of state member banks and smaller holding companies.

S. 3217 would focus the attention of the Federal Reserve on just the largest institutions and could serve to limit the Federal Reserve's understanding of the importance of community banks. Federal Reserve supervision enhances the ability of the Federal Reserve to assess credit impact in local communities. Smaller banks tend to fund smaller businesses, which is an important source of jobs for the economy. Removing Federal Reserve supervision of community banks could mean the Federal Reserve would lose timely information about the flow of credit to small businesses.

The Chamber looks forward to working with the Senate on meaningful, bipartisan legislation to ensure that the U.S. financial system is protected and that small businesses continue to have access to the capital they need to sustain, grow, and create jobs.

Sincerely,

R. BRUCE JOSTEN.

Mrs. HUTCHISON. I also wish to read a couple excerpts from a letter by the Federal Reserve Bank of Kansas City to Senator BENNET. It goes into a lot of other things, but the relevant part says:

Unfortunately, if the Senate divides the oversight of the [bank holding companies] between the banking regulators, it will multiply and complicate this oversight significantly. This is hardly an improvement. And, limiting the regional Reserve Banks' source of industry information gained through their contact with all institutions and bank regulators will greatly compromise its ability to understand industry trends and deal with future crises. This is a mistake and I hope you will consider it carefully in your deliberations.

That is signed by Thomas Hoenig, president of the Federal Reserve Bank of Kansas City.

In addition, the President of the Dallas Federal Reserve Bank, Richard Fisher, came to my office to make this point most affirmatively, that he wanted to make sure he still had the supervisory power and the ability to learn from the State banks, the community banks in the whole region where the Dallas Federal Reserve Bank sits.

Last, I wish to read an excerpt from the alert of the American Bankers Association:

As you know, S. 3217, the regulatory restructuring bill, contains language that would move oversight of state banks that are members of the Federal Reserve and their holding companies to the [FDIC]. [The American Bankers Association] is strongly opposed to this provision, as this would take away the Federal Reserve's ability to regulate state member banks and would undermine the Federal Reserve's ability to fully understand small and mid-size institutions and the communities they serve.

As early as Wednesday, May 5, the Senate will consider an ABA-supported amendment . . . by Senators Kay Bailey Hutchison and Amy Klobuchar that would restore current law by returning oversight of state member banks and holding companies to the Federal Reserve.

It is very important that our amendment be passed by the Senate. It will make a great improvement to this bill in that it will restore the law as it is today. It will not have the mixup of the varying regulatory bodies having control in one area, where a bank across the street does not have the ability to go to the Fed and one across the street does. We don't need that. What we want in this regulatory reform is to allow all the banks to be members of the Federal Reserve, to have the same discounts, the same backing of that supervisory authority so Federal Reserve banks all over our country will have the input of the community banks in our system rather than making monetary policy from New York and Washington, DC. The last thing we need is more people who are out of touch with mainstream America doing the regulation of our financial industry.

Mr. President, I commend my colleague, Senator KLOBUCHAR from Minnesota, and would like to ask her to speak at this time because I think this bipartisan amendment will improve this bill greatly, and I look forward to having the vote tomorrow.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, I thank my colleague, Senator HUTCHISON, for her great leadership on this issue. We have worked together from the beginning on this amendment, and you can see there is support for this amendment from the Lone Star State to the North Star State, spanning this country—as you look at the many States across this country that truly believe it is important to have the regional Federal Reserve involved in decisions, not have anything and everything concentrated in Washington and New York City, which we believe got us into lots of this trouble in the first place.

The amendment we have offered is important because what it does is seek to preserve a system that ensures that the institution charged with our Nation's monetary policy has a connection to Main Street, not just Wall Street—Main Street in Benson, MN; Main Street in Austin, TX; Main Street in Denver, CO. That is what we are talking about.

As I have said before, Main Street banks pretty much stayed away from the high flying, way-too-risky deals of the past decade, and when the pavement on Wall Street began to buckle and collapse, these banks—these small community banks—did not panic and run to Washington with tin cups and outstretched hands.

Like the rest of Main Street, they suffered because of bad bets made on Wall Street. But they kept doing their work. They kept serving their customers. So now, with us debating a Wall Street reform that will affect how these small banks, these community banks do business, I think they have a right to speak up. That is what this amendment is about.

I would like to give a lot of credit to Chairman DODD, who is here as usual in the late evening hours, as well as Ranking Member SHELBY, along with the rest of their Banking Committee who worked so incredibly hard. Chairman DODD has been working with us on this amendment and has been working with us on many issues affecting the community banks. I thank him for that.

I think we took another important step yesterday when we passed the Tester-Hutchison amendment that will make sure community banks pay only their fair share when it comes to Federal bank insurance.

But the issue my colleague, Senator HUTCHISON, so eloquently discussed is whether the Federal Reserve will continue to oversee our State member community banks. That issue still remains.

Like I am sure all of you have, I have heard from my community banks. I have heard from the Fed. I have thought about this a lot. I just want to give you an example of what those community banks—the bankers out there in the heartland, who basically are standing out there with their feet firmly on the ground, with their briefcases in their hands. They were not there as these credit default swaps swallowed and swirled around their heads. They were there just doing their job.

Here is what Noah Wilcox, the president of Grand Rapids State Bank in Grand Rapids, MN—Grand Rapids, MN, home of the Judy Garland Museum. If you ever want to go there, you can actually put your head in a cut-out hole of the Tin Man. Yes, you can. The Tin Man—right—needed a heart. The lion needed courage. And the scare crow needed a brain. You could go there to Grand Rapids.

Well, this is what the president of the Grand Rapids State Bank said:

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

From the Lone Star State to the North Star State.

When Congress established the Federal Reserve in 1913, Congress purposely created a system of regional banks, overseen by a board in Washington, to ensure that the power of this institution would not be concentrated far from these banks and the communities they serve. That is why I believe Mr. Wilcox's—the guy from Grand Rapids, the banker—statement rings especially true. He was not just advocating for his bank or other banks in Minnesota or across the country. He said the Federal Reserve was created for ''all of America.''

The Federal Reserve Bank of Minneapolis just does not supervise banks, it also partners with the communities it serves by providing resources and sharing expertise. I will give you one example. We have Art Rolnick, known nationally for the work he has done on early childhood development. He works with the Federal Reserve. He is one of their policy experts. He is retiring this summer. He has literally devoted the last few years of his career looking at early childhood development—the investment. He has put out numbers. He has put out studies straight from the Federal Reserve because he had that information on the ground to show the kind of return of investment you get when you invest in kids early on. I do not think we would see that coming out of the Federal Reserve in Washington. This came out of the regional banks.

This interaction with regional banks can clearly be seen in the interdisciplinary research it conducts in Minnesota with the University of Minnesota and in its partnerships with financial institutions and community-based organizations to provide investment in low- and moderate-income communities.

Together the regional banks provide a presence across this country that gives the Fed grassroots connections—not just in board rooms in New York, not just in the hallways of Congress in Washington, but right there in Grand Rapids, MN, on Main Street—insights into local economies. What is happening with the timber industry? What is happening with the medical device industry? They know that on the front line. What is happening to the high-tech industry? What is happening with the telecommunications industry in Denver? That is what the regional banks do for us.

They also provide legitimacy when they have to make tough decisions—when the Fed has to make those tough decisions—to have those regional banks out there with legitimacy in the banking community and the business community to say: This is not just about Wall Street; this is also about Main Street.

Their geographic diversity also allows the regional banks to develop unique expertise. For instance, the Federal Reserve Bank in Minneapolis has a wide breadth of knowledge in the agricultural economies of Minnesota and the other States in its district. You are not going to get that in the middle of New York City. You are not going to get that in the middle of Washington, DC. Through the Federal Reserve of Minneapolis, the community banks they supervise have a better understanding of the markets that ultimately aid them in their loan making decisions.

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. Because community banks interact with so many parts of the economy—from the ordinary folks who bank with them, to the small businesses they provide loans, to real estate developers, and even local governments—their connections to the communities they serve provide a unique perspective for the Fed to tap.

This relationship is a two-way street, as it also provides a voice for our community banks that would be lost if the Federal Reserve were to only supervise the largest banks. A system like this would certainly limit, and potentially distort, the picture the Federal Reserve gets of what is happening in our Nation's banking system.

I repeat, this crisis did not happen because of this little bank in Grand Rapids, MN. It happened because eyes were not watching what was going on on Wall Street. Eyes were not watching what was going on in these big banks. The rest of these guys—these small banks—they were the ones who were the victims of this crisis.

As the president of the Federal Reserve Bank in Minneapolis pointed out in a speech this past March, it would be shortsighted to conclude that the Federal Reserve ''can safely be stripped of its role as a supervisor of small 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 financial system.

Opponents will argue that the Federal Reserve does not need to supervise banks to gain insight into them, that they can get this information by other means and through other sources. But, currently, much of the Federal Reserve's interaction with community banks comes from the supervision done by its examiners. Many of these examiners have lived and worked in the districts they serve for many years, and the information they provide is critical to the Fed's understanding of local economies.

This system—a system that serves all Americans—is threatened if we do not act. Currently, the Federal Reserve Bank of Minneapolis—and I am sure you see this in Texas, in Missouri, in Colorado, and the Federal Reserve's banks all across this country—currently, the Federal Reserve Bank of Minneapolis oversees over 600 banks in the Ninth District. Without this amendment, it would oversee one—one—bank.

This is what my friend, the Senator from Texas, is talking about. You would go from 600 banks—in an area that did not cause this financial crisis, that was simply a victim of this financial crisis—you would take 600 banks from them, send them out somewhere in a consolidated way to Washington and New York, and they would oversee one. All they would have is a bank holding company with over $50 billion in assets. This means connections to over 600 communities will be lost, not just in Minnesota, but in Montana, North Dakota, South Dakota, Wisconsin, and Michigan. That is the region.

The Federal Reserve System was designed to prevent it from being focused just on Wall Street, at the expense of Main Street. That is why the Hutchison-Klobuchar amendment is so important, to put this bill in a place where we not only get the great accountability of the bill, with the great work that is being done in every single sector, so we do not make these mistakes again that were made that brought us to the brink of a financial crisis that allowed all of these banks to be on the verge of collapse—and some of them, in fact, collapsed on Wall Street—that is an important piece—but it is equally important to make sure our Main Street community banks get a fair shake and that the Federal Reserve in the regional areas of this country—from the Lone Star State to the North Star State—be allowed to continue to get the information they need to do their job.

I urge other Senators to join Senator HUTCHISON and me in supporting this amendment, to make sure the voices of our community banks, the voices of our small towns across the country and the local economies they serve, continue to be heard.

Mr. President, I yield back to Senator HUTCHISON.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I call up the amendment Senator KLOBUCHAR and I have just been discussing, and the amendment, as modified, is at the desk. It is No. 3759, as modified.

The PRESIDING OFFICER. Without objection, the clerk will report the amendment, as modified.

The assistant editor of the Daily Digest read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Ms. KLOBUCHAR, Mr. JOHANNS, Mr. CORKER, Mr. VITTER, Mr. BOND, Mr. SHELBY, Mr. CRAPO, Mr. BROWN of Massachusetts, and Mr. BENNETT proposes an amendment numbered 3759, as modified, to amendment No. 3739.

Mrs. HUTCHISON. 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, as modified, is as follows:

(Purpose: To maintain the role of the Board of Governors as the supervisor of holding companies and State member banks)

On page 299, strike line 3 and all that follows through page 367, line 19, and insert the following:

SEC. 312. POWERS AND DUTIES TRANSFERRED.

(a) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

(b) FUNCTIONS OF THE OFFICE OF THRIFT SUPERVISION.—

(1) SAVINGS AND LOAN HOLDING COMPANY FUNCTIONS TRANSFERRED.—There are transferred to the Board of Governors all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision (including the authority to issue orders) relating to—

(A) the supervision of—

(i) any savings and loan holding company; and

(ii) any subsidiary (other than a depository institution) of a savings and loan holding company; and

(B) all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings and loan holding companies.

(2) ALL OTHER FUNCTIONS TRANSFERRED.—

(A) BOARD OF GOVERNORS.—All rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision under section 11 of the Home Owners' Loan Act (12 U.S.C. 1468) relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders and under section 5(q) of such Act relating to tying arrangements is transferred to the Board of Governors.

(B) COMPTROLLER OF THE CURRENCY.—Except as provided in paragraph (1) and subparagraph (A), there are transferred to the Comptroller of the Currency all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to Federal savings associations.

(C) CORPORATION.—Except as provided in paragraph (1) and subparagraph (A), all functions of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to State savings associations are transferred to the Corporation.

(D) COMPTROLLER OF THE CURRENCY AND THE CORPORATION.—Except as provided in paragraph (1) and subparagraph (A), all rulemaking authority of the Office of Thrift Supervision and the Director of the Office of Thrift Supervision relating to savings associations is transferred to the Office of the Comptroller of the Currency.

(c) CONFORMING AMENDMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) is amended by striking paragraphs (1) through (4) and inserting the following:

''(1) the Office of the Comptroller of the Currency, in the case of—

''(A) any national banking association;

''(B) any Federal branch or agency of a foreign bank; and

''(C) any Federal savings association;

''(2) the Federal Deposit Insurance Corporation, in the case of—

''(A) any insured State nonmember bank;

''(B) any foreign bank having an insured branch; and

''(C) any State savings association;

''(3) the Board of Governors of the Federal Reserve System, in the case of—

''(A) any State member bank;

''(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

''(C) any foreign bank which does not operate an insured branch;

''(D) any agency or commercial lending company other than a Federal agency;

''(E) 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, including such proceedings under the Financial Institutions Supervisory Act of 1966;

''(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

''(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.''.

(2) FEDERAL DEPOSIT INSURANCE ACT.—

(A) APPLICATION.—Section 8(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(3)) is amended to read as follows:

''(3) APPLICATION TO BANK HOLDING COMPANIES, SAVINGS AND LOAN HOLDING COMPANIES, AND EDGE AND AGREEMENT CORPORATIONS.—

''(A) APPLICATION.—This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 shall apply to—

''(i) any bank holding company, and any subsidiary (other than a bank) of a bank holding company, as those terms are defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the bank holding company was the appropriate Federal banking agency;

''(ii) any savings and loan holding company, and any subsidiary (other than a depository institution) of a savings and loan holding company, as those terms are defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a), as if such company or subsidiary was an insured depository institution for which the appropriate Federal banking agency for the savings and loan holding company was the appropriate Federal banking agency; and

''(iii) any organization organized and operated under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.) or operating under section 25 of the Federal Reserve Act (12 U.S.C. 601 et seq.) and any noninsured State member bank, as if such organization or bank was a bank holding company.

''(B) RULES OF CONSTRUCTION.—

''(i) EFFECT ON OTHER AUTHORITY.—Nothing in this paragraph may be construed to alter or affect the authority of an appropriate Federal banking agency to initiate enforcement proceedings, issue directives, or take other remedial action under any other provision of law.

''(ii) HOLDING COMPANIES.—Nothing in this paragraph or subsection (c) may be construed as authorizing any Federal banking agency other than the appropriate Federal banking agency for a bank holding company or a savings and loan holding company to initiate enforcement proceedings, issue directives, or take other remedial action against a bank holding company, a savings and loan holding company, or any subsidiary thereof (other than a depository institution).''.

(B) CONFORMING AMENDMENT.—Section 8(b)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)(9)) is amended to read as follows:

''(9) [Reserved].''.

(d) CONSUMER PROTECTION.—Nothing in this section may be construed to limit or otherwise affect the transfer of powers under title X.

SEC. 313. ABOLISHMENT.

Effective 90 days after the transfer date, the Office of Thrift Supervision and the position of Director of the Office of Thrift Supervision are abolished.

SEC. 314. AMENDMENTS TO THE REVISED STATUTES.

(a) AMENDMENT TO SECTION 324.—Section 324 of the Revised Statutes of the United States (12 U.S.C. 1) is amended to read as follows:

"SEC. 324. COMPTROLLER OF THE CURRENCY.

"(a) OFFICE OF THE COMPTROLLER OF THE CURRENCY ESTABLISHED.—There is established in the Department of the Treasury a bureau to be known as the 'Office of the Comptroller of the Currency' which is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction.

"(b) COMPTROLLER OF THE CURRENCY.—

"(1) IN GENERAL.—The chief officer of the Office of the Comptroller of the Currency shall be known as the Comptroller of the Currency. The Comptroller of the Currency shall perform the duties of the Comptroller of the Currency under the general direction of the Secretary of the Treasury. The Secretary of the Treasury may not delay or prevent the issuance of any rule or the promulgation of any regulation by the Comptroller of the Currency, and may not intervene in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law.

"(2) ADDITIONAL AUTHORITY.—The Comptroller of the Currency shall have the same authority with respect to functions transferred to the Comptroller of the Currency under the Enhancing Financial Institution Safety and Soundness Act of 2010 (including matters that were within the jurisdiction of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision on the day before the transfer date under that Act) as was vested in the Director of the Office of Thrift Supervision on the transfer date under that Act.".

(b) AMENDMENT TO SECTION 329.—Section 329 of the Revised Statutes of the United States (12 U.S.C. 11) is amended by inserting before the period at the end the following: "or any Federal savings association".

(c) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 315. FEDERAL INFORMATION POLICY.

Section 3502(5) of title 44, United States Code, is amended by inserting "Office of the Comptroller of the Currency," after "the Securities and Exchange Commission,".

SEC. 316. SAVINGS PROVISIONS.

(a) OFFICE OF THRIFT SUPERVISION.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Sections 312(b) and 313 shall 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 existed on the day before the transfer date.

(2) CONTINUATION OF SUITS.—This title shall not abate any action or proceeding commenced by or against the Director of the Office of Thrift Supervision or the Office of Thrift Supervision before the transfer date, except that, for any action or proceeding arising out of a function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision that is transferred to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors by this subtitle, the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors shall be substituted for the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, as appropriate, as a party to the action or proceeding as of the transfer date.

(b) CONTINUATION OF EXISTING ORDERS, RESOLUTIONS, DETERMINATIONS, AGREEMENTS, REGULATIONS, AND OTHER MATERIALS.—All orders, resolutions, determinations, agreements, regulations, interpretative rules, other interpretations, guidelines, procedures, and other advisory materials that have been issued, made, prescribed, or allowed to become effective by the Office of Thrift Supervision, or by a court of competent jurisdiction, in the performance of functions of the Office of Thrift Supervision that are transferred by this subtitle and that are in effect on the day before the transfer date, shall continue in effect according to the terms of those materials, and shall be enforceable by or against the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, until modified, terminated, set aside, or superseded in accordance with applicable law by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as appropriate, by any court of competent jurisdiction, or by operation of law.

(c) IDENTIFICATION OF REGULATIONS CONTINUED.—

(1) BY THE OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Not later than the transfer date, the Office of the Comptroller of the Currency shall—

(A) in consultation with the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Office of the Comptroller of the Currency; and

(B) publish a list of such regulations in the Federal Register.

(2) BY THE CORPORATION.—Not later than the transfer date, the Corporation shall—

(A) in consultation with the Office of the Comptroller of the Currency, identify the regulations continued under subsection (b) that will be enforced by the Corporation; and

(B) publish a list of such regulations in the Federal Register.

(3) BY THE BOARD OF GOVERNORS.—Not later than the transfer date, the Board of Governors shall—

(A) in consultation with the Office of the Comptroller of the Currency and the Corporation, identify the regulations continued under subsection (b) that will be enforced by the Board of Governors; and

(B) publish a list of such regulations in the Federal Register.

(d) STATUS OF REGULATIONS PROPOSED OR NOT YET EFFECTIVE.—

(1) PROPOSED REGULATIONS.—Any proposed regulation of the Office of Thrift Supervision that the Office of Thrift Supervision, in performing functions transferred by this subtitle, has proposed before the transfer date, but has not published as a final regulation before that date, shall be deemed to be a proposed regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to its terms.

(2) REGULATIONS NOT YET EFFECTIVE.—Any interim or final regulation of the Office of Thrift Supervision that the Office of Thrift Supervision, in performing functions transferred by this subtitle, has published before the transfer date, but which has not become effective before that date, shall become effective as a regulation of the Office of the Comptroller of the Currency or the Board of Governors, as appropriate, according to its terms.

SEC. 317. REFERENCES IN FEDERAL LAW TO FEDERAL BANKING AGENCIES.

Except as provided in section 312(d)(2), on and after the transfer date, any reference in Federal law to the Director of the Office of Thrift Supervision or the Office of Thrift Supervision, in connection with any function of the Director of the Office of Thrift Supervision or the Office of Thrift Supervision transferred under section 312(b) or any other provision of this subtitle, shall be deemed to be a reference to the Comptroller of the Currency, the Office of the Comptroller of the Currency, the Chairperson of the Corporation, the Corporation, the Chairman of the Board of Governors, or the Board of Governors, as appropriate.

SEC. 318. FUNDING.

(a) FUNDING OF OFFICE OF THE COMPTROLLER OF THE CURRENCY.—Chapter 4 of title LXII of the Revised Statutes is amended by inserting after section 5240 (12 U.S.C. 481, 482) the following:

"SEC. 5240A. The Comptroller of the Currency may collect an assessment, fee, or other charge from any entity described in section 3(q)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)(1)), as the Comptroller determines is necessary or appropriate to carry out the responsibilities of the Office of the Comptroller of the Currency. In establishing the amount of an assessment, fee, or charge collected from an entity under this section, the Comptroller of the Currency may take into account the funds transferred to the Office of the Comptroller of the Currency under this section, the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor, as the Comptroller of the Currency determines is appropriate. Funds derived from any assessment, fee, or charge collected or payment made pursuant to this section may be deposited by the Comptroller of the Currency in accordance with the provisions of section 5234. Such funds shall not be construed to be Government funds or appropriated monies, and shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or any other provision of law. The authority of the Comptroller of the Currency under this section shall be in addition to the authority under section 5240.

"The Comptroller of the Currency shall have sole authority to determine the manner in which the obligations of the Office of the Comptroller of the Currency shall be incurred and its disbursements and expenses allowed and paid, in accordance with this section.".

(b) FUNDING OF BOARD OF GOVERNORS.—Section 11 of the Federal Reserve Act (12 U.S.C. 248) is amended by adding at the end the following:

"(s) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

"(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the responsibilities of the Board with respect to such companies.

"(2) COMPANIES.—The companies described in this paragraph are—

"(A) all bank holding companies having total consolidated assets of $50,000,000,000 or more;

"(B) all savings and loan holding companies having total consolidated assets of $50,000,000,000 or more; and

"(C) all nonbank financial companies supervised by the Board under section 113 of the Restoring American Financial Stability Act of 2010.".

(c) CORPORATION EXAMINATION FEES.—Section 10(e) of the Federal Deposit Insurance Act (12 U.S.C. 1820(e)) is amended by striking paragraph (1) and inserting the following:

"(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations, or as the Corporation determines is necessary or appropriate to carry out the responsibilities of the Corporation.''.

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, shall take effect on the transfer date.

SEC. 319. CONTRACTING AND LEASING AUTHORITY.

Notwithstanding the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or any other provision of law, the Office of the Comptroller of the Currency may—

(1) enter into and perform contracts, execute instruments, and acquire, in any lawful manner, such goods and services, or personal or real property (or property interest) as the Comptroller deems necessary to carry out the duties and responsibilities of the Office of the Comptroller of the Currency; and

(2) hold, maintain, sell, lease, or otherwise dispose of the property (or property interest) acquired under paragraph (1).

Subtitle B—Transitional Provisions

SEC. 321. INTERIM USE OF FUNDS, PERSONNEL, AND PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.

(a) IN GENERAL.—Before the transfer date, the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall—

(1) consult and cooperate with the Office of Thrift Supervision to facilitate the orderly transfer of functions to the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors in accordance with this title;

(2) determine jointly, from time to time—

(A) the amount of funds necessary to pay any expenses associated with the transfer of functions (including expenses for personnel, property, and administrative services) during the period beginning on the date of enactment of this Act and ending on the transfer date;

(B) which personnel are appropriate to facilitate the orderly transfer of functions by this title; and

(C) what property and administrative services are necessary to support the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors during the period beginning on the date of enactment of this Act and ending on the transfer date; and

(3) take such actions as may be necessary to provide for the orderly implementation of this title.

(b) AGENCY CONSULTATION.—When requested jointly by the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors to do so before the transfer date, the Office of Thrift Supervision shall—

(1) pay to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, from funds obtained by the Office of Thrift Supervision through assessments, fees, or other charges that the Office of Thrift Supervision is authorized by law to impose, such amounts as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a);

(2) detail to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such personnel as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be appropriate under subsection (a); and

(3) make available to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such property and provide to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, as applicable, such administrative services as the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly determine to be necessary under subsection (a).

(c) NOTICE REQUIRED.—The Office of the Comptroller of the Currency, the Corporation, and the Board of Governors shall jointly give the Office of Thrift Supervision reasonable prior notice of any request that the Office of the Comptroller of the Currency, the Corporation, and the Board of Governors jointly intend to make under subsection (b).

SEC. 322. TRANSFER OF EMPLOYEES.

(a) IN GENERAL.—

(1) OFFICE OF THRIFT SUPERVISION EMPLOYEES.—

(A) IN GENERAL.—All employees of the Office of Thrift Supervision shall be transferred to the Office of the Comptroller of the Currency or the Corporation for employment in accordance with this section.

(B) ALLOCATING EMPLOYEES FOR TRANSFER TO RECEIVING AGENCIES.—The Director of the Office of Thrift Supervision, the Comptroller of the Currency, and the Chairperson of the Corporation shall—

(i) jointly determine the number of employees of the Office of Thrift Supervision necessary to perform or support the functions that are transferred to the Office of the Comptroller of the Currency or the Corporation by this title; and

(ii) consistent with the determination under clause (i), jointly identify employees of the Office of Thrift Supervision for transfer to the Office of the Comptroller of the Currency or the Corporation.

(2) EMPLOYEES TRANSFERRED; SERVICE PERIODS CREDITED.—For purposes of this section, periods of service with a Federal home loan bank, a joint office of Federal home loan banks, or a Federal reserve bank shall be credited as periods of service with a Federal agency.

(3) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE TRANSFERRED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any appointment authority of the Office of Thrift Supervision under Federal law that relates to the functions transferred under section 312, including the regulations of the Office of Personnel Management, for filling the positions of employees in the excepted service shall be transferred to the Comptroller of the Currency or the Chairperson of the Corporation, as appropriate.

(B) DECLINING TRANSFERS ALLOWED.—The Office of the Comptroller of the Currency or the Chairperson of the Corporation may decline to accept a transfer of authority under subparagraph (A) (and the employees appointed under that authority) 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.

(4) ADDITIONAL APPOINTMENT AUTHORITY.—Notwithstanding any other provision of law, the Office of the Comptroller of the Currency and the Corporation may appoint transferred employees to positions in the Office of the Comptroller of the Currency or the Corporation, respectively.

(b) TIMING OF TRANSFERS AND POSITION ASSIGNMENTS.—Each employee to be transferred under subsection (a)(1) shall—

(1) be transferred not later than 90 days after the transfer date; and

(2) receive notice of the position assignment of the employee not later than 120 days after the effective date of the transfer of the employee.

(c) TRANSFER OF FUNCTIONS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the transfer of employees under this subtitle shall be deemed a transfer of functions for the purpose of section 3503 of title 5, United States Code.

(2) PRIORITY.—If any provision of this subtitle conflicts with any protection provided to a transferred employee under section 3503 of title 5, United States Code, the provisions of this subtitle shall control.

(d) EMPLOYEE STATUS AND ELIGIBILITY.—The transfer of functions and employees under this subtitle, and the abolishment of the Office of Thrift Supervision under section 313, shall not affect the status of the transferred employees as employees of an agency of the United States under any provision of law.

(e) EQUAL STATUS AND TENURE POSITIONS.—

(1) STATUS AND TENURE.—Each transferred employee from the Office of Thrift Supervision shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation with the same status and tenure as the transferred employee held on the day before the date on which the employee was transferred.

(2) FUNCTIONS.—To the extent practicable, each transferred employee shall be placed in a position at the Office of the Comptroller of the Currency or the Corporation, as applicable, responsible for the same functions and duties as the transferred employee had on the day before the date on which the employee was transferred, in accordance with the expertise and preferences of the transferred employee.

(f) NO ADDITIONAL CERTIFICATION REQUIREMENTS.—An examiner who is a transferred employee shall not be subject to any additional certification requirements before being placed in a comparable position at the Office of the Comptroller of the Currency or the Corporation, if the examiner carries out examinations of the same type of institutions as an employee of the Office of the Comptroller of the Currency or the Corporation as the employee was responsible for carrying out before the date on which the employee was transferred.

(g) PERSONNEL ACTIONS LIMITED.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the transfer date, an employee holding a permanent position on the day before the date on which the employee was transferred shall not be involuntarily separated or involuntarily reassigned outside the locality pay area (as defined by the Office of Personnel Management) of the employee.

(2) EXCEPTIONS.—The Comptroller of the Currency and the Chairperson of the Corporation, as applicable, may—

(A) separate a transferred employee for cause, including for unacceptable performance; or

(B) terminate an appointment to a position excepted from the competitive service because of its confidential policy-making, policy-determining, or policy-advocating character.

(h) PAY.—

(1) 2-YEAR PROTECTION.—Except as provided in paragraph (2), during the 2-year period beginning on the date on which the employee was transferred under this subtitle, a transferred employee shall be paid at a rate that is not less than the basic rate of pay, including any geographic differential, that the transferred employee received during the pay period immediately preceding the date on which the employee was transferred.

(2) EXCEPTIONS.—The Comptroller of the Currency or the Chairman of the Board of Governors may reduce the rate of basic pay of a transferred employee—

(A) for cause, including for unacceptable performance; or

(B) with the consent of the transferred employee.

(3) PROTECTION ONLY WHILE EMPLOYED.—This subsection shall apply to a transferred employee only during the period that the transferred employee remains employed by Office of the Comptroller of the Currency or the Corporation.

(4) PAY INCREASES PERMITTED.—Nothing in this subsection shall limit the authority of the Comptroller of the Currency or the Chairperson of the Corporation to increase the pay of a transferred employee.

(i) BENEFITS.—

(1) RETIREMENT BENEFITS FOR TRANSFERRED EMPLOYEES.—

(A) IN GENERAL.—

(i) CONTINUATION OF EXISTING RETIREMENT PLAN.—Each transferred employee shall remain enrolled in the retirement plan of the transferred employee, for as long as the transferred employee is employed by the Office of the Comptroller of the Currency or the Corporation.

(ii) EMPLOYER'S CONTRIBUTION.—The Comptroller of the Currency or the Chairperson of the Corporation, as appropriate, shall pay any employer contributions to the existing retirement plan of each transferred employee, as required under each such existing retirement plan.

(B) DEFINITION.—In this paragraph, the term ''existing retirement plan'' means, with respect to a transferred employee, the retirement plan (including the Financial Institutions Retirement Fund), and any associated thrift savings plan, of the agency from which the employee was transferred in which the employee was enrolled on the day before the date on which the employee was transferred.

(2) BENEFITS OTHER THAN RETIREMENT BENEFITS.—

(A) DURING FIRST YEAR.—

(i) EXISTING PLANS CONTINUE.—During the 1-year period following the transfer date, each transferred employee may retain membership in any employee benefit program (other than a retirement benefit program) of the agency from which the employee was transferred under this title, including any dental, vision, long term care, or life insurance program to which the employee belonged on the day before the transfer date.

(ii) EMPLOYER'S CONTRIBUTION.—The Office of the Comptroller of the Currency or the Corporation, as appropriate, shall pay any employer cost required to extend coverage in the benefit program to the transferred employee as required under that program or negotiated agreements.

(B) DENTAL, VISION, OR LIFE INSURANCE AFTER FIRST YEAR.—If, after the 1-year period beginning on the transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as the case may be, will not continue to participate in any dental, vision, or life insurance program of an agency from which an employee was transferred, a transferred employee who is a member of the program may, before the decision takes effect and without regard to any regularly scheduled open season, elect to enroll in—

(i) the enhanced dental benefits program established under chapter 89A of title 5, United States Code;

(ii) the enhanced vision benefits established under chapter 89B of title 5, United States Code; and

(iii) the Federal Employees' Group Life Insurance Program established under 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 transfer date, the Office of the Comptroller of the Currency or the Corporation determines that the Office of the Comptroller of the Currency or the Corporation, as appropriate, will not continue to participate in any long term care insurance program of an agency from which an employee transferred, a transferred employee who is a member of such a program may, before the decision takes effect, elect to apply for coverage under the Federal Long Term Care Insurance Program established under chapter 90 of title 5, United States Code, under the underwriting requirements applicable to a new active workforce member, as described in part 875 of title 5, Code of Federal Regulations (or any successor thereto).

(D) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(i) IN GENERAL.—Subject to clause (ii), a transferred employee who is enrolled in a plan under the Federal Employees Health Benefits Program shall pay any employee contribution required under the plan.

(ii) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as applicable, shall pay any difference in cost between the employee contribution required under the plan provided to transferred employees by the agency from which the employee transferred on the date of enactment of this Act and the plan provided by the Office of the Comptroller of the Currency or the Corporation, as the case may be, under this section.

(iii) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the 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 Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Fund for the cost to the Fund of providing any benefits under this subparagraph that are not otherwise paid for by a transferred employee under clause (i).

(E) SPECIAL PROVISIONS TO ENSURE CONTINUATION OF LIFE INSURANCE BENEFITS.—

(i) IN GENERAL.—An annuitant, as defined in section 8901 of title 5, United States Code, who is enrolled in a life insurance plan administered by an agency from which employees are transferred under this title on the day before the transfer date shall be eligible for coverage by a life insurance plan under sections 8706(b), 8714a, 8714b, or 8714c of title 5, United States Code, or by a life insurance plan established by the Office of the Comptroller of the Currency or the Corporation, as applicable, without regard to any regularly scheduled open season or any requirement of insurability.

(ii) CONTRIBUTION OF TRANSFERRED EMPLOYEE.—

(I) IN GENERAL.—Subject to subclause (II), a transferred employee enrolled in a life insurance plan under this subparagraph shall pay any employee contribution required by the plan.

(II) COST DIFFERENTIAL.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall pay any difference in cost between the benefits provided by the agency from which the employee transferred on the date of enactment of this Act and the benefits provided under this section.

(III) FUNDS TRANSFER.—The Office of the Comptroller of the Currency or the Corporation, as the case may be, shall transfer to the Federal Employees' Group 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 Comptroller of the Currency or the Chairperson of the Corporation, as the case may be, and the Office of Management and Budget, to be necessary to reimburse the Federal Employees' Group Life Insurance Fund for the cost to the Federal Employees' Group Life Insurance Fund of providing benefits under this subparagraph not otherwise paid for by a transferred employee under subclause (I).

(IV) CREDIT FOR TIME ENROLLED IN OTHER PLANS.—For any transferred employee, enrollment in a life insurance plan administered by the agency from which the employee transferred, 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.

(j) INCORPORATION INTO AGENCY PAY SYSTEM.—Not later than 2 years after the transfer date, the Comptroller of the Currency and the Chairperson of the Corporation shall place each transferred employee into the established pay system and structure of the appropriate employing agency.

(k) EQUITABLE TREATMENT.—In administering the provisions of this section, the Comptroller of the Currency and the Chairperson of the Corporation—

(1) may not take any action that would unfairly disadvantage a transferred employee relative to any other employee of the Office of the Comptroller of the Currency or the Corporation on the basis of prior employment by the Office of Thrift Supervision; and

(2) may take such action as is appropriate in an individual case to ensure that a transferred employee receives 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 for prior periods of service with any Federal agency of the transferred employee.

(l) REORGANIZATION.—

(1) IN GENERAL.—If the Comptroller of the Currency or the Chairperson of the Corporation determines, during the 2-year period beginning 1 year after the transfer date, that a reorganization of the staff of the Office of the Comptroller of the Currency or the Corporation, respectively, is required, the 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.

(2) SERVICE CREDIT.—For purposes of this subsection, periods of service with a Federal home loan bank or a joint office of Federal home loan banks shall be credited as periods of service with a Federal agency.

SEC. 323. PROPERTY TRANSFERRED.

(a) PROPERTY DEFINED.—For purposes of this section, the term ''property'' includes all real property (including leaseholds) and all personal property, including computers, furniture, fixtures, equipment, books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence related to such reports, and any other information or materials.

(b) PROPERTY OF THE OFFICE OF THRIFT SUPERVISION.—Not later than 90 days after the transfer date, all property of the Office of Thrift Supervision that the Comptroller of the Currency and the Chairperson of the Corporation jointly determine is used, on the day before the transfer date, to perform or support the functions of the Office of Thrift Supervision transferred to the Office of the

Comptroller of the Currency or the Corporation under this title, shall be transferred to the Office of the Comptroller of the Currency or the Corporation in a manner consistent with the transfer of employees under this subtitle.

(c) CONTRACTS RELATED TO PROPERTY TRANSFERRED.—Each contract, agreement, lease, license, permit, and similar arrangement relating to property transferred to the Office of the Comptroller of the Currency or the Corporation by this section shall be transferred to the Office of the Comptroller of the Currency or the Corporation, as appropriate, together with the property to which it relates.

(d) PRESERVATION OF PROPERTY.—Property identified for transfer under this section shall not be altered, destroyed, or deleted before transfer under this section.

SEC. 324. FUNDS TRANSFERRED.

The funds that, on the day before the transfer date, the Director of the Office of Thrift Supervision (in consultation with the Comptroller of the Currency, the Chairperson of the Corporation, and the Chairman of the Board of Governors) determines are not necessary to dispose of the affairs of the Office of Thrift Supervision under section 325 and are available to the Office of Thrift Supervision to pay the expenses of the Office of Thrift Supervision—

(1) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(B), shall be transferred to the Office of the Comptroller of the Currency on the transfer date;

(2) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(C), shall be transferred to the Corporation on the transfer date; and

(3) relating to the functions of the Office of Thrift Supervision transferred under section 312(b)(1)(A), shall be transferred to the Board of Governors on the transfer date.

SEC. 325. DISPOSITION OF AFFAIRS.

(a) AUTHORITY OF DIRECTOR.—During the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision—

(1) shall, solely for the purpose of winding up the affairs of the Office of Thrift Supervision relating to any function transferred to the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors under this title—

(A) manage the employees of the Office of Thrift Supervision who have not yet been transferred and provide for the payment of the compensation and benefits of the employees that accrue before the date on which the employees are transferred under this title; and

(B) manage any property of the Office of Thrift Supervision, until the date on which the property is transferred under section 323; and

(2) may take any other action necessary to wind up the affairs of the Office of Thrift Supervision.

(b) STATUS OF DIRECTOR.—

(1) IN GENERAL.—Notwithstanding the transfer of functions under this subtitle, during the 90-day period beginning on the transfer date, the Director of the Office of Thrift Supervision shall retain and may exercise any authority vested in the Director of the Office of Thrift Supervision on the day before the transfer date, only to the extent necessary—

(A) to wind up the Office of Thrift Supervision; and

(B) to carry out the transfer under this subtitle during such 90-day period.

(2) OTHER PROVISIONS.—For purposes of paragraph (1), the Director of the Office of Thrift Supervision shall, during the 90-day period beginning on the transfer date, continue to be—

(A) treated as an officer of the United States; and

(B) entitled to receive compensation at the same annual rate of basic pay that the Director of the Office of Thrift Supervision received on the day before the transfer date.

SEC. 326. CONTINUATION OF SERVICES.

Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, that was, before the transfer date, providing support services to the Office of Thrift Supervision in connection with functions transferred to the Office of the Comptroller of the Currency, the Corporation or the Board of Governors under this title, shall—

(1) continue to provide such services, subject to reimbursement by the Office of the Comptroller of the Currency, the Corporation, or the Board of Governors, until the transfer of functions under this title is complete; and

(2) consult with the Comptroller of the Currency, the Chairperson of the Corporation, or the Chairman of the Board of Governors, as appropriate, to coordinate and facilitate a prompt and orderly transition.

On page 459, line 17, strike ''bank'' and insert ''nonmember bank, and the Board may, by order, exempt a transaction of a State member bank,''.

On page 1045, line 19, insert after ''Currency'' the following: '', the Board of Governors of the Federal Reserve System,''.

Mrs. HUTCHISON. Mr. President, we are restoring section 605 of the underlying bill. But I just think it is so important we take this action. Senator KLOBUCHAR made a great statement about what would happen with the Minnesota Fed going down to one bank. How are they going to have the input to talk to the Federal Reserve Board about monetary policy if their supervision is over one bank? In fact, I understood they might be closing some of the local offices of the Fed because there will be nothing to supervise, and there will be no input, there will be no knowledge of what is going on in some of the communities.

I think the Federal Reserve Bank of Dallas is in much the same situation. It would also go down to one from about over 400. I will get the numbers exactly by tomorrow. But that is just going to make a huge difference in the knowledge base of our Federal Reserve Board. It would be unthinkable to have monetary policy made without the input from all of our States that the regional banks give at this time.

The regional banks do a great job. I have dealt with many of the regional banks. They have great influence on monetary policy. The presidents of the regional banks rotate in the Open Market Committee that makes our Fed decisions, and it is a very good system. It was carefully put together so it would be a monetary system that represents our whole country. That is probably one of the reasons why our economy has remained so stable through the years since the Federal Reserve was created.

So I appreciate the support of the Senator from Minnesota. This is a truly bipartisan amendment. We have Republican cosponsors, Democratic cosponsors, and I am very hopeful we will have a vote early tomorrow in this mix because I think this will add a lot of support from our community banks to know they are not going to be shut out of access to the Federal Reserve, and that the Federal Reserve banks will not be shut out from the community banks that are so important for the knowledge base of our monetary policy that is made and, frankly, is the main stay of the stability of our economic system.

So I thank the distinguished chairman of the committee for staying and letting us talk tonight, and I look forward to having the vote tomorrow on our amendment.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. First of all, let me just say regarding the Merkley-Klobuchar amendment to the Corker—not amendment to it, but the side-by-side—I wish to thank Senator SCOTT BROWN of Massachusetts and OLYMPIA SNOWE of Maine for cosponsoring that amendment on the underwriting standards. I appreciate that very much.

Let me say to both of my colleagues, Senator HUTCHISON and Senator KLOBUCHAR, as my colleagues know, I started out many months ago with the idea of trying to come down to a single prudential regulator as one of the reforms in this bill. One of my concerns, as my colleagues know, was we had some nine agencies. It was an alphabet soup out there with a lot of overlap in terms of actually who is responsible, who is going to be accountable for things that occur. Obviously, we want to have a dual banking system, the State banks and so forth, that don't want to be drawn into a Federal system unnecessarily. So it began to break down from a single prudential regulator to maybe two.

I say this with great respect, but I would point out that the Federal Reserve Board, of course, never implemented the requirements on mortgage lending that passed in 1994. A lot of the major financial institutions were basically unregulated institutions. My concern has been that the Fed did not exactly live up to its reputation during this period of time and contributed in major ways to the problems we are in today.

So I have great respect for their monetary function, which is the core function; the payment system, which is their core function; their primarily monetary function, determining the credibility of our currency. We had an earlier debate today on that very issue. The system was established in 1914, 1917, almost 100 years ago.

At some point down the road we are going to need to think about the Federal Reserve System. We have two Federal Reserve regional banks in the State of Missouri. The next one is in San Francisco. So I think the idea of thinking through how to make it more relevant is a legitimate issue. Obviously, we are not going to deal with that in this bill. We will leave that for a later Congress to work on those issues.

I appreciate what my colleagues are trying to do, and I recognize the importance at these regional levels that want to maintain some involvement in all of this for the reasons that Senator KLOBUCHAR and Senator HUTCHISON have identified. Again, I know how we have been talking about how to work on this a bit. Let me just make one plea. One of the major concerns that happened with this proliferation of regulators—it happened with AIG classically and in other cases; it happened back in the thrift crisis days as well—is that industries go out and shop and they look for the regulator of least resistance, the ones they can get away the most with. That was one of the major problems that happened here.

So I want to avoid wherever possible this, what they call regulatory arbitrage; that is, the shopping that goes on: Let me find the regulator that will let me get away with the most. Of course, the Federal Reserve has a lot to demonstrate in the years ahead that they got the message, as they didn't do a very good job when they had the responsibility.

So coming Congresses will have to keep an eye on this to make sure they are going to not only want the job, but also to assume the responsibility in doing this so we don't end up with problems running haywire again. It is true, small banks didn't create a problem. Only about 800 out of the 8,000 are regulated by the Federal Reserve. The overwhelming majority, of course, are not regulated by the Federal Reserve. And, of course, they didn't do much in it because they didn't get involved in subprime lending. So it wasn't a problem. There was a reason they didn't get involved in subprime lending, which is for another day, but nonetheless I understand they got in trouble with commercial loans which was their major problem.

So I hope on the arbitrage issue that we try to create as much of a level playing field as possible so we don't find institutions shopping around because of assessment costs or other matters which can once again find this migration into an area, not because it is a right place to be but because it is where you would prefer to be. The decision by institutions as to where they want to be ought not be the criteria by which we determine regulation. We have to have a better set of rules than that or we end up back where we were before.

My colleagues have done a great job. They have been faithful in reaching out and trying to find accommodation where they can. So I am very grateful to both of my colleagues and their cosponsors. We look forward to tomorrow having a vote. In the meantime, I have made an appeal to work on a couple of pieces of this thing. We would not go into that right now. I thank them both and I thank my colleagues. It has been a long day. We covered a lot of ground today—some major amendments. We will vote tomorrow and move along.

Again, I make the point that this almost seems like a throwback. When I arrived some 30 years ago, this was the way we did things. We haven't had a single tabling motion. We haven't had a single filibuster. I would argue maybe this is one of the top two pieces of legislation to be considered in this Congress on regulatory reform. It is a major undertaking. The patience and the involvement of my colleagues has been terrific, and I wish to thank them as well.

The PRESIDING OFFICER. The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. President, can I just commend Senator DODD and Senator SHELBY for setting this tone. There was an article this weekend about how we are working together on a major piece of legislation. As my colleagues can see from the amendment, Senator HUTCHISON and I have a bipartisan amendment, and I appreciate the chairman's openness to this amendment and his kind words. I thank him for his work.

Mr. DODD. I thank you both.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I would also say that this shouldn't be a political bill. This should be a bill that is hammered out on the floor and that does have bipartisan amendments because it is complicated. It does have to fit together a lot of different needs, different regulatory standards, different types of banks and financial institutions and nonbank financial institutions. I hope it is going to be a product that—regardless of how big the vote is—will make the system better. I think this process has been the best I have seen this year in accommodating different concerns that have been raised by both sides.

So I thank the chairman and the ranking member for that. I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, there is no more debate this evening.

Mr. LEVIN. Mr. President, I come to the Senate floor today to speak in support of a package of amendments to the financial reform bill that is a result of an investigation by the Permanent Subcommittee on Investigations, which I chair. I am submitting these amendments with the support of my colleague, Senator KAUFMAN, who is not only a member of the subcommittee but also sat with me through hours of subcommittee hearings over a period of 2 weeks to examine some of the causes and consequences of the crisis that nearly brought down our financial system, that necessitated billions of dollars in taxpayer money to arrest, and that was a principal cause of the worst recession in nearly a century.

We also are submitting the package as eight separate amendments to facilitate their consideration.

Over nearly a year and a half, our bipartisan investigation examined millions of pages of documents, conducted over 100 interviews, and culminated in four hearings during April, with over 2,500 pages of hearing exhibits and more than 30 hours of testimony. The American people, having suffered so much in this crisis and having had to pay so much of their hard-earned money to keep it from getting even worse, deserve to know what happened.

But more than establishing a record of what went wrong, we sought information to help keep us from repeating the same mistakes in the future. Like all of the subcommittee's investigations, our eye was on both establishing a factual record and on using that record to support legislation that would rebuild Main Street's defenses against the excesses of Wall Street.

The recklessness, lax oversight, and conflicts of interest our investigation has uncovered cry out for legislated reform. The hearings revealed that mortgage lenders such as Washington Mutual dumped hundreds of billions of dollars of high risk and sometimes fraudulent home loans into the U.S. financial system; banking regulators, such as the Office of Thrift Supervision, observed and understood the flaws and the risks, failed to stop them, and even impeded the examination efforts of the Federal Deposit Insurance Corporation; credit rating agencies, such as Moody's and Standard & Poor's, gave inflated ratings to risky structured finance products in an effort to keep market share and please their investment bank clients; and investment banks such as Goldman Sachs, assembled, marketed, and sold high risk mortgage-related products, while betting against the very products they created.

That is why I and Senator KAUFMAN have assembled a package of amendments to the financial regulatory reform bill now before the Senate. We believe these amendments would help stop the bad loans, misleading credit ratings, poor quality securitizations, and other problems we saw in our investigation, as well as slow down the existing revolving door for regulators. They are intended to strengthen an already strong bill that so many of our colleagues have worked so hard to bring to this point. Let me outline briefly what our amendments would accomplish.

Ban on Stated-Income and Negative Amortization Loans. First, in response to the hundreds of billions of dollars in high-risk mortgage loans that began this crisis and that were featured in our first hearing, our amendment would sharply limit two of the most dubious practices: stated-income loans and negatively amortizing loans. Stated-income loans, also known as ''liar loans,'' are ones in which lenders allow borrowers simply to state their income on the loan applications without any confirmation of the borrower's income or assets. Negative amortization loans are loans in which lenders allow the borrowers, for a specified period of time, to pay less than the monthly amount needed to cover the interest, resulting in loan balances that increase rather than decrease over time, and then impose a much higher loan payment to make up for the earlier low payments. That leads to payment shock and loan defaults by a large number of borrowers.

Washington Mutual, which was the case history in our first hearing, used stated-income and negative amortization loans with disastrous results, leading to the largest bank failure in U.S. history. Stated-income loans made up 90 percent of its home equity loans, for example, and 70 percent of its option ARMs, adjustable-rate mortgages, which often are negatively amortizing. Because both types of loans default at much higher rates than traditional 30-year fixed rate mortgages, lenders such as Washington Mutual quickly sold them to remove the risk from their books. But those high-risk loans did not disappear; they were packaged into securities and sold to investors, spreading risk throughout the financial system. Eventually, when housing prices stopped rising and borrowers could not refinance their mortgages, the loans defaulted in record numbers, the securities plummeted in value, and the securitization market crashed. Our amendment would ensure that stated-income and negative amortization loans could not again be used to foist high-risk, poor quality loans off on investors in securitizations.

Skin in the Game Securitizations. Second, our amendment would strengthen an existing provision in the bill that requires financial firms to retain some of the risk of the mortgage-backed securities they assemble. Too often, lenders such as Washington Mutual and investment banks such as Goldman Sachs were in the business of packaging high-risk mortgages into structured financial instruments, slicing and dicing them in new ways, obtaining credit ratings indicating that portions of these instruments carried no more risk than Treasury securities but significantly higher returns, and then passing the risk to others, selling them to investors without retaining any risk on their books. In many cases, as our hearings showed, these financial institutions knew the products they had assembled were of dubious quality but were happy to sell them so long as they made a fee and knew that none of the risk could come back to harm them. This short-term pursuit of profits, with no concern for customers or for the toxic securities polluting the financial system, so damaged the securitization markets that they are still struggling to recover.

Our amendment would help stop these short-sighted and dangerous securitization practices by requiring financial institutions that securitize mortgages to keep some of their own skin in the game. It would build on an existing provision in the Dodd bill by requiring that securitizers keep an ownership interest in the securities they create. While the existing provision would require securitizers to keep a 5 percent interest in the securitization as a whole, it does not specify whether that 5 percent interest could be concentrated in a single portion, or tranche, of securities, such as the low-risk, supersenior tranche at the top or the high-risk equity tranche at the bottom, which is often what happened during the crisis. Our amendment would make it clear that the ownership interest would have to be distributed throughout the capital structure—not just in a single tranche—so that the securitizer's interests would be aligned with the interests of all levels of investors buying the securities and would give the securitizer a stake in the success of all of the tranches, not just one.

In addition, our amendment would make it clear that regulators could allow lenders to go below the 5 percent requirement only if they are including high-quality, low-risk assets in their securities, such as 30-year fixed rate mortgages. Inclusion of this low-risk standard in the provision allowing lenders to avoid the 5 percent requirement would create an enormous incentive for securitizers to use low-risk loans in their securitizations.

Gustafson Fix. Third, we would address the effects of a 1995 Supreme Court ruling in the Gustafson case that has left investors in private securities offerings without protection from material misstatements or omissions in the security's prospectus. The Gustafson ruling interpreted the securities laws as depriving purchasers in private offerings of the same protections against material misstatements or omissions that apply to public offerings. Our amendment would restore congressional intent and close that loophole.

FDIC Examination Authority. Fourth, we would strengthen protections for the Federal deposit insurance fund and against the need for taxpayer bailouts by enhancing the FDIC's authority to initiate bank exams and enforcement actions. Under our amendment, the FDIC's chairperson would have the authority to initiate an exam, authority that now rests solely with the FDIC's board, which is cumbersome and includes other regulators that can prevent FDIC from acting quickly. During the subcommittee's second hearing, documents and testimony showed how the Office of Thrift Supervision thwarted FDIC efforts to participate in examinations of Washington Mutual and take enforcement action to reduce the bank's unsustainable high-risk lending. The Federal agency charged with protecting the deposit insurance fund should not have to jump through hoops to look at bank records or stop unsafe or unsound practices. Our amendment would make it clear that the FDIC can act decisively and quickly to deal with endangered financial institutions before their failure threatens the FDIC insurance fund or the safety of the financial system.

Credit Rating Agencies. Fifth, our amendment would strengthen a host of provisions in the Dodd bill dealing with credit rating agencies. Credit rating agencies did not originate the bad loans or risky securities that led to the crisis. But their disastrously inaccurate ratings made those loans and securities easy to sell and helped spread risk throughout the financial system.

The subcommittee's third hearing showed a clear conflict of interest inherent in the credit rating agencies' business model: They are dependent for revenue upon the same financial firms whose products they are supposed to impartially rate. Our amendment would eliminate that conflict by requiring rating agencies to receive their fees through an intermediary to be established or designated by the SEC.

In addition, the amendment would strike the existing statutory ban that prohibits direct SEC oversight of the credit rating models, methodologies, and criteria that failed so catastrophically in this crisis, and would explicitly direct the SEC to oversee them. We would also require the agencies to rate as more risky products that, for example, lack past performance data; that are provided by an issuer with a history of issuing poorly performing instruments; that receive prior credit ratings already subject to downgrade; that consist of synthetic instruments in which no income is being contributed by actual assets; or that consist of instruments whose complexity or novelty make it difficult to reliably predict their performance. We would also build upon a Dodd provision requiring that certain information be provided about each credit rating issued by an agency, including a requirement that ratings come with an ''expiration date'' indicating whether they are intended to be effective for more or less than a year. We would also bar credit rating agencies from relying on due diligence reviews of financial products when the agencies have reason to believe that the due diligence is inadequate. Together, these provisions would help ensure that the SEC has the authority it needs to conduct vigorous and meaningful oversight of credit rating agencies, instead of the current system that provides for SEC oversight in theory but denies it in practice.

Restriction on Synthetic Asset-Backed Securities. Sixth, we would rein in the pernicious effects of synthetic asset-backed securities on the financial system. These securities contain no real assets. Their value is tied to the assets that they reference, but the securitizer and the investors need not, and often do not, have any economic interest in those assets. Too often, these instruments have amounted to nothing more than bets on whether a security or other asset would go up or down in value. Such transactions, usually embodied in collateralized debt obligations, or CDOs, greatly magnified the damage that resulted when poor quality mortgage-backed securities defaulted and helped bring down storied financial firms such as Lehman Brothers and Bear Stearns.

Under our amendment, synthetic asset-backed securities that lack any substantial or material economic purpose other than speculation on the value or condition of referenced assets could no longer be sold. Wall Street firms that claim a synthetic asset-backed security has a substantial economic benefit apart from wagering on asset values will have an opportunity to prove those claims to the SEC. We must end the pollution of the U.S. financial system with these dangerous financial instruments that spread risk without adding anything of substance to the real economy.

Slowing the Revolving Door. Seventh, we would seek to slow down the revolving door between financial regulatory agencies and the financial sector by requiring a 1-year ''cooling off'' period before a Federal financial regulator could work for a financial institution he or she regulated. In 2005, we enacted a 1-year cooling off period for bank examiners, after Riggs Bank hired the bank examiner who used to oversee its operations and who took some questionable regulatory actions before switching his employment. That law has been on the books for 5 years, providing a healthy deterrent to bank examiners that get too close to the banks they regulate. Our amendment would expand this approach to all Federal financial regulators, from the Federal Reserve to the SEC to the CFTC to the new Consumer Financial Protection Bureau. It would prevent a regulator who participated personally and substantially in the regulation or oversight of a particular financial institution or took an enforcement action against a specific financial institution from taking a job with the same institution for at least a year.

Foreign Bank Anti-Tax Evasion Remedy. Finally, based upon a number of previous subcommittee investigations showing how some foreign banks have been deliberately assisting U.S. clients to evade U.S. taxes, our amendment would give the Treasury Department discretionary authority to take measures against foreign financial institutions or foreign jurisdictions that impede U.S. tax enforcement. Those measures include such actions as imposing additional recordkeeping requirements, refusing to honor credit cards issued by a foreign bank or, in the most extreme cases, prohibiting U.S. financial institutions from doing business with the offending foreign financial institution or jurisdiction. This provision would build upon a Patriot Act provision that has proven highly effective in stopping foreign banks from engaging in money laundering activities and would take the same approach in discouraging foreign banks from aiding or abetting tax evasion.

We offer this amendment in the hope of improving what is already a strong bill, either as a package or divided into its separate elements. It is not all that needs to be done—for example, I have joined with Senator MERKLEY in an amendment submitted to limit proprietary trading and conflicts of interest by financial institutions—additional problems examined during the subcommittee hearings. It is clear that the evidence revealed by the subcommittee's lengthy investigation and four hearings requires Congress to act now to protect Main Street from financial abuses that have so damaged our economy and American families.

Mrs. FEINSTEIN. Mr. President, I rise to speak in support of an amendment I am offering to the Wall Street reform bill.

The Dodd-Lincoln bill, as currently drafted, takes major steps to reform the $900 trillion derivative markets. It would require every trade to be reported in real time to the CFTC; require all cleared contracts to be traded on an exchange or on a swap execution facility; require speculative position limits set in ''aggregate'' for each commodity, instead of contract by contract; and require foreign boards of trade to adhere to minimum standards comparable to those in the United States, including reporting requirements—this provision is designed to address the underlying problem of the so-called London Loophole.

I very much support these provisions. However, I am concerned that the bill doesn't go far enough to address the London loophole. This loophole has allowed for the trading of U.S. energy commodities—such as crude oil—on foreign exchanges without strong oversight from U.S. regulators.

This means that there is no cop on the beat to shield U.S. oil prices from manipulation or excessive speculation when they are traded in foreign markets, like commodities exchanges in London or Shanghai.

The amendment I am proposing would allow CFTC to require foreign boards of trade to register with CFTC, which would give CFTC the enforcement authority it needs. This provision was in President Obama's original proposed financial reform bill, and it is strongly supported by CFTC Chairman Gensler.

First, let me explain what has become known as the London loophole.

As Congress has taken steps to improve regulatory oversight of domestic commodity trading markets, Wall Street traders have increasingly turned to offshore markets to electronically trade U.S. energy futures—in order to evade American market oversight and speculation limits.

This new regulatory loophole earned its nickname—the London loophole—because America's most important crude oil contract—known as West Texas Intermediate—is today traded on the Intercontinental Exchange in London. This contract has what is called a price discovery impact because it is commonly referenced as the standard market price of oil.

The practical implication of this is that U.S. traders can use electronic exchanges based overseas to artificially drive up the prices of U.S. commodities—without any consequences from our Nation's market regulators. This is a major problem.

A 2008 CFTC report found that traders using this London exchange to trade U.S. crude oil futures held positions far larger than would be allowed by American regulators. In fact, from 2006 to 2008 at least one trader position exceeded U.S. speculation limits every single week on the London exchange, and British regulators had done nothing about it.

The good news is that some steps have been taken administratively to address this loophole.

In 2008, the CFTC negotiated an agreement with British regulators to bring greater oversight to American commodities contracts traded in London. The agreement called for speculation limits for the electronic trading of U.S. energy commodities—like crude oil—on foreign exchanges, and required recording-keeping and an audit trail. But CFTC has limited legal authority to enforce this agreement.

Bottom Line: We need to make sure the CFTC can oversee trading of American commodities, whether it happens through a computer server located on Wall Street or in Shanghai.

The Dodd-Lincoln bill currently before us does include some important provisions to help close the London loophole. As drafted, the bill will require foreign boards of trade that provide access to American traders to comply with comparable rules enforced by a foreign regulator, publish trading information daily, supply data to CFTC, and enforce position limits.

However, CFTC may be unable to force a Foreign Board of Trade to comply with these requirements.

This is because the CFTC's current method of overseeing foreign exchanges has tenuous legal underpinnings, due to a Commodity Exchange Act provision forbidding CFTC from ''regulating'' foreign boards of trade.

In many instances, the CFTC can take action against a U.S. trader on a foreign exchange to prevent manipulation or excessive speculation only with the cooperation and consent of the foreign regulator. The other, more controversial option is for the CFTC to completely ban the foreign exchange from all U.S. operations. Not surprisingly, the CFTC often shies away from enforcement, in the face of these regulatory obstacles.

That is why I am offering a proposal to allow CFTC to require foreign boards of trade to register with CFTC, which would give CFTC the enforcement authority it needs.

Here are the benefits of this amendment:

First, the registration process itself would give CFTC the authority to impose appropriate regulatory requirements as a condition of registration.

Second, a formal registration process would assure that foreign boards of trade all follow the same set of rules.

Third, the registration process would provide a much clearer basis for CFTC decisions to refuse or withdraw permission to foreign boards of trade wishing to allow American traders on their exchange.

Finally, and most importantly, all of CFTC's existing enforcement authorities apply to registered entities under the Commodity Exchange Act.

This amendment would therefore allow CFTC to enforce its own statute with regard to foreign exchanges operating in the United States.

This is a very moderate, practical amendment to assure that we give CFTC the authority to enforce the statutory provisions already in the proposed legislation. It would only provide the CFTC with equivalent authority to that held by virtually all foreign futures regulators—including the British.

I have worked for many years to bring about meaningful regulation of the derivatives markets, and that is why I am so pleased that Senators LINCOLN and DODD have brought forward the strongest derivatives regulatory proposal considered by this Congress.

But as we crack down on traders in our markets, we must be ever vigilant to assure that traders sitting on Wall Street do not avoid our regulations by trading on electronic exchanges with computer servers in London, or Dubai, or Singapore.

This amendment would improve the London loophole provisions in the Dodd-Lincoln bill, by making those provisions more easily enforceable.

It is the final piece necessary to close the London loophole, ensuring that our government has what it needs to protect American markets from manipulation and excessive speculation, no matter where U.S. energy commodities are traded.

I ask my colleagues to support this amendment.

Mr. DODD. Mr. President, I ask unanimous consent that on Wednesday, May 12, following any leader time, the Senate then resume consideration of S. 3217, and that the time until 10 a.m. be for debate with respect to the following three amendments, with the time equally divided and controlled between the leaders or their designees; that at 10 a.m., the Senate proceed to vote in relation to the amendments in the order listed, with no amendments in order to the amendments prior to a vote, with 2 minutes of debate prior to the succeeding votes and with the succeeding votes limited to 10 minutes: Merkley amendment No. 3962, Corker amendment No 3955, Hutchison-Klobuchar amendment No. 3759, as modified; provided further, that the next two amendments in order would be the Landrieu-Isakson amendment regarding risk retention and the Snowe-Landrieu amendment No. 3918.

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

MORNING BUSINESS

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

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

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

SECRET HOLDS

• Mr. BYRD. Mr. President, I recently declined to sign a letter that is circulating, in which certain Senators pledge not to place ''secret'' holds on legislation and nominations. The letter features a very broad promise by the signers to refrain from asking the leadership to delay Senate consideration of a matter, without a full public explanation of the request.

When a small minority—often a minority of one—abuses senatorial courtesy and misuses anonymous holds to indefinitely delay action on matters, then I am as adamant as any of my colleagues in insisting that Senators should come to the Senate floor and make their objections known. When abuses of this courtesy have occurred, I have supported efforts by others, and proposed some of my own, to ignore holds after a certain period of time. I am ready to support such efforts again.

But I also believe that there are situations when it is appropriate and even important for Senators to raise a private objection to the immediate consideration of a matter with the leadership and to request a reasonable amount of time to try to have concerns addressed. There are times when Senators put holds on nominations or bills not to delay action but to be notified before a matter is coming to the floor so that they can prepare amendments or more easily plan schedules. These are courtesies afforded to all Senators. In many cases, there is nothing nefarious or diabolical about reasonable requests for holds. Certainly, public disclosures are not necessary every time Senators want to slightly alter the Senate schedule for the coming week. Certainly, public disclosures are not necessary every time Senators request consultation or advanced notification on a matter coming to the floor.

I appreciate that some Senators may be frustrated with what they believe are abuses of the Senate rules, but I also hope that Senators will endeavor to understand—before they suggest pledges or propose less than well-reasoned changes—that the rules, precedents, customs, practices, traditions, and courtesies of the Senate have been forged over hundreds of years and after much trial and experience. After all, the benefit of this experience is to preserve the institutional protection of all Senators and their efforts to fairly represent the people of their States. The Senate is not the House of Representatives and was never intended to function as such. The Senate's purpose is to carefully and critically examine, not to expedite.

Unfortunately, when the Senate rules and customs are abused and Senators become frustrated, it can lead to ill-considered changes, and sometimes the pendulum can swing too far. Let us try to keep the institutional purpose of the Senate uppermost in mind. The Nation certainly requires the extended debate and deliberation that those time-honored rules, precedents, and customs are designed to guarantee.•

LRA DISARMAMENT AND NORTHERN UGANDA RECOVERY ACT

Mr. LEVIN. Mr. President, for more than 20 years, a group called the Lord's Resistance Army, or LRA, has operated in central Africa, perpetrating some of the most horrific acts of violence one can envision. The LRA began as a rebel group saying it drew its guidance from the Ten Commandments, but in the two decades since it began, it has routinely violated those commandments in the most gruesome and unimaginable ways. Its continued campaign of violence calls out for Congress and the United States to act.

Recently the United Nations uncovered the latest of the LRA's violent acts, the rounding up and massacring of more than 100 innocent villagers in a remote part of the Democratic Republic of the Congo. The New York Times reported on May 1 that U.N. officials had learned of the massacre, which occurred in February. U.N. officials interviewed several witnesses, including one woman whose lips were cut off by LRA rebels, who told the woman she was talking too much.

The LRA's actions were described in brutally clear terms in a recent Human Rights Watch report entitled ''Trail of Death.'' In it Human Rights Watch investigators describe the typical tactics, techniques, and procedures of this terrible group of people:

> The LRA used similar tactics in each village they attacked during their four-day operation: they pretended to be Congolese and Ugandan army soldiers on patrol, reassured people in broken Lingala (the common language of northern Congo) not to be afraid, and, once people had gathered, captured their victims and tied them up. LRA combatants specifically searched out areas where people might gather—such as markets, churches, and water points—and repeatedly asked those they encountered about the location of schools, indicating that one of their objectives was to abduct children. Those who were abducted, including many children aged 10 to 15 years old, were tied up with ropes or metal wire at the waist, often

in human chains of five to 15 people. They were made to carry the goods the LRA had pillaged and then forced to march off with them. Anyone who refused, walked too slowly, or who tried to escape was killed. Children were not spared.

The LRA got its start in Uganda, where it has done and continues to do horrific damage. At one time, about 2 million Ugandans were displaced from their homes by LRA violence; the rebels massacred, mutilated and abducted civilians, and forced many into sexual servitude; and an estimated 66,000 Ugandan children were forced to fight for the group.

Uganda is still recovering from the LRA's campaign of violence. Having been forced out of Uganda, LRA bands have moved into neighboring nations, including Sudan, the Democratic Republic of the Congo, and the Central African Republic—countries already ravaged by man-made and natural disasters. As the latest report shows, it is still a grave threat. As John Holmes, the U.N. under secretary general for humanitarian affairs, put it, ''they are still capable of wreaking absolute havoc—and they still do.''

Because of the havoc the LRA has caused across central Africa, I am one of more than 60 Senators who have cosponsored S. 1067, the LRA Disarmament and Northern Uganda Recovery Act, introduced by Senators FEINGOLD and BROWNBACK. The act would require that within 6 months, the United States develop a comprehensive strategy for dealing with the LRA, including an outline of steps to protect the civilian population against LRA violence. The act would authorize funding to provide humanitarian assistance in areas affected by the LRA. And it would provide assistance for reconstruction and for promotion of justice and reconciliation in areas of Uganda recovering from the LRA's depredations.

This legislation would establish, as a matter of policy, a U.S. commitment to working with regional governments to end the conflict in Uganda and surrounding nations by providing support to multilateral efforts to protect civilians, apprehend top LRA leaders and disarm their followers; providing humanitarian assistance to relieve the immense suffering the LRA has caused; and supporting efforts to promote justice and reconciliation in the region affected by LRA violence.

We have delayed too long in enacting this legislation. The Senate passed this important legislation in March, and the House Foreign Affairs Committee favorably reported the bill to the full House last week. I am hopeful that the committee's approval signals the likelihood of approval by the full House soon. I hope our colleagues in the House will move swiftly to pass this legislation and send it to the President for his signature; to do anything less would be a failure to act with the urgency, and the humanity, that the LRA's campaign of terror demands.

Mr. President, I ask unanimous consent that a recent New York Times article on this incident be printed in the RECORD.

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

[From the New York Times, May 1, 2010]

U.N. SAYS CONGO REBELS KILLED SCORES IN VILLAGE

(By Jeffrey Gettleman)

KISANGANI, CONGO—United Nations officials said Saturday that the Lord's Resistance Army rebel force killed up to 100 people in a previously unreported massacre in the remote northeastern corner of this country.

Details are still emerging of exactly what happened. But according to John Holmes, the United Nation's top humanitarian official, the L.R.A. struck a small village in February, two months after it killed more than 300 people from several villages in the surrounding area.

United Nations investigators have spoken with several witnesses and victims of the massacre in February, including two fishermen who said they saw dozens of bodies.

But the investigators have been unable to reach the exact location because of the difficulties of traveling in one of the most rugged and isolated corners of Africa.

Mr. Holmes said that while recent military operations may have weakened the L.R.A., ''they are still capable of wreaking absolute havoc—and they still do.''

He said he learned about the February attack on Saturday, when he met with local authorities and victims in Niangara, an old trading post hidden away in the Congolese jungle that has recently been ringed by roving bands of L.R.A. marauders.

One of the people he met was a young woman whose lips had been sliced off last month. She was attacked by rebels while working in her field, she said Saturday, sitting in a hospital bed, her face a mask of gauze and tape.

''They told me I was talking too much,'' she said.

The L.R.A. has been waging a brutal and bizarre rebellion for more than 20 years, starting in northern Uganda in the late 1980s.

Originally, it said it was guided by the Ten Commandments, but soon it was breaking every one, massacring and mutilating civilians and becoming notorious for kidnapping young children and turning them into 4-foot-tall killing machines.

The Ugandan Army eventually drove the L.R.A. out of Uganda but the rebels simply marched into neighboring northeastern Congo, where they set up bases in isolated areas.

Recently, the Ugandan military has killed dozens of fighters hiding out in Congo and the Central African Republic, though the L.R.A.'s leader, Joseph Kony, who has been indicted by the International Criminal Court on crimes against humanity, is still on the loose.

In the December massacre, the L.R.A. killed more than 300 people in a brutal recruitment campaign near Niangara, in which a few dozen rebel fighters abducted hundreds of civilians, marching them in a human chain from village to village. Along the way, the fighters beat to death men, women and children they did not want to keep in their ranks.

''For anyone saying that the L.R.A. is finished, I would be careful not to count them out,'' Mr. Holmes said. ''They have an amazing capacity to regenerate themselves, especially by kidnapping children.''

NATIONAL ALCOHOL- AND OTHER DRUG-RELATED BIRTH DEFECTS WEEK

Mr. JOHNSON. Mr. President, I rise today in recognition of National Alcohol and Other Drug-Related Birth Defects Week. Substance abuse during pregnancy is the leading known cause of birth defects and mental retardation in the United States. Each year thousands of babies are born with the physical signs and intellectual disabilities related to prenatal substance abuse.

Of all the substances of abuse—including heroin, cocaine, and marijuana—alcohol produces the most serious physical and mental effects in the fetus, according to the Institute of Medicine. Referred to as fetal alcohol spectrum disorders, or FASD, the potential outcomes of alcohol abuse during pregnancy include mental retardation, growth deficits, altered facial characteristics, organ defects, behavioral problems, delayed motor skills, and various learning disabilities.

Researchers estimate that more than 3 million Americans live with an FASD and as many as 40,000 infants are annually born with an FASD. The tragedy of alcohol- and other drug-related birth defects is entirely preventable and must be addressed. We must increase efforts to reach out to all women of childbearing age and connect those most at risk to treatment and counseling services. Increased awareness and education about the effects of substance abuse during pregnancy is the best way to reduce the prevalence of devastating birth defects.

I recently joined Senators MURKOWSKI, INOUYE, and LANDRIEU in introducing the Advancing FASD Research, Prevention, and Services Act, in an effort to improve the surveillance, identification, and prevention of FASD. This legislation will make grants available to federally qualified health centers to provide training to health care providers on identifying and educating women who are at risk for alcohol consumption during pregnancy and on screening children for FASD. Through national public and education campaigns, this bill will reach millions and raise awareness of the risks associated with alcohol consumption during pregnancy.

There is no cure for FASD and other drug-related birth defects. Yet the devastating effects are entirely preventable when pregnant women abstain from substance use. It is therefore imperative to reach at-risk women and ensure they have knowledge of the dangers of substance abuse, as well as access to quality reproductive and prenatal care. When we move past the stigma associated with this disease, we can truly help those and their families who are affected get the health, education, counseling, and support services they need and deserve.

I have long supported efforts to put an end to this entirely preventable and destructive disease. In my home State of South Dakota, over 7,800 individuals are suspected of living with an FASD.

With the leadership of the health professionals at our esteemed universities, parents, and teachers, among countless others, we have made some important progress in addressing this issue. However, there is more work to be done to prevent alcohol- and other drug-related birth defects in South Dakota and at the national level. The goal is to one day entirely eliminate the heartbreaking, lifelong effects of fetal alcohol and drug exposure.

SUDAN

Mr. FEINGOLD. Mr. President, there are many important issues that demand Congress's attention, but one that we cannot afford to neglect the situation is Sudan. We are in the midst of a decisive period that will determine the future of that country and shape the conflicts that have long besieged its people.

In less than 9 months, the people of South Sudan will hold their referendum on self-determination, with the option to forge an independent state. There are serious challenges involved with the holding of that referendum and any subsequent transition to independence. The potential for instability is high.

Meanwhile, the conflict in Darfur remains unresolved and is likely to get worse. Over 2 million displaced people are still living in camps, and earlier this week, one of the largest rebel groups in Darfur suspended their involvement in peace talks after alleging that the Sudanese Government has launched fresh attacks.

Finally, the peace in eastern Sudan, one of the country's most impoverished regions, continues to be fragile. The dynamics in each of Sudan's regions and the future of the country in general will have profound implications for neighboring countries, as well as the wider region.

Last month, the people of Sudan held their first multiparty elections in 24 years. I join the White House in commending the Sudanese people for their efforts to make these elections peaceful and meaningful, and I am pleased that the voting witnessed no major armed violence. However, I was disappointed by statements of the U.S. Special Envoy in the runup to the election suggesting that the elections would be "as free and as fair as possible." This was clearly not the case.

For months beforehand, many of us had expressed concern about the political, security, and logistical challenges to credible elections. The environment was clearly not conducive for opposition parties to freely operate and campaign, nor was it conducive for all voters to safely and confidently go to the polls. The inability of the government both in the north and in the south—to adequately address the significant infrastructure and logistical challenges resulted in decreased voter access.

There is good reason for the international community to question the extent to which the results reflect the will of the Sudanese people. Furthermore, the fact that the winner of the Presidential election has been indicted by the International Criminal Court for war crimes is problematic. In no way should the international community allow this outcome to take away from the serious charges President Bashir faces.

The White House statement after the Sudanese election was thoughtful and balanced. It acknowledged the significant problems with the process but also distinguished between the credibility of elections and the potential still for democratic progress. These elections were seriously flawed, but indeed there was evidence of the beginnings of citizen engagement at the local levels that did not exist before. It will be important to build on that momentum going forward.

The White House statement rightly pointed out that continued pressure will be critical to make progress for the civil and political rights of all Sudanese people. That pressure must come first and foremost from within the country, but there remains an important role for the United States and other members of the international community.

Over the last year, I have been concerned at times that the Obama administration has not exerted the requisite pressure to hold Khartoum accountable for a failure to live up to its commitments. There are too many promises, commitments, and agreements broken without consequence. Theoretically, I am not opposed to engaging the Government of Sudan, but I share Nicholas Kristof's concern that our engagement "ends up as a policy to go soft on [Bashir] and to reduce pressure on Khartoum to honor the referendum in the south."

With the election now concluded, the international community must redouble its efforts to prepare for South Sudan's referendum and its outcome, whatever that may be. It is critical that this referendum be held on time and that it be held as fairly and peacefully as possible.

In order for this to happen, there is much work to be done both logistically and politically including efforts to resolve the outstanding issues the CPA, as well as ambiguous postreferenda matters, such as resource allocation and citizenship rights. In the case of separation, these two issues are likely to be the most inflammatory and difficult to address. The international community, as well as countries in the region, has an active role to play in advancing related negotiations and preparations for the referendum. Sudan's neighboring states especially have interests at stake that could be directly affected by either a peaceful separation or a return to conflict.

We must see serious and detailed contingency planning for all possible scenarios, both pre- and post-referendum and they must get underway now. While the most obvious tripwire for a return to war would be a delay of the referendum, planning must also include clear guidance on how to deal with the possibility that the different actors could seek to manipulate, or disrupt, the results of that referendum.

I continue to be concerned that the NCP could foment insecurity in the south as it has done in the past, but I am particularly concerned by the internal security challenges within South Sudan. They are considerable and will not be easily resolved. Humanitarian organizations reported that over 2,500 people were killed and an additional 350,000 were displaced by interethnic and communal violence within southern Sudan throughout 2009. The Lord's Resistance Army continues to wreak havoc on communities in the southwestern corner of the country. In his testimony to the Senate Intelligence Committee in February, the Director of National Intelligence identified South Sudan as the area in which "a new mass killing or genocide is most likely to occur."

The task of transforming the army and police into modern security organs that protect civilians and respect human rights is daunting but vital. We need to roll up our sleeves and get to work on helping the South Sudanese to accomplish this task, while empowering UNMIS in the meantime to better protect civilians and monitor flashpoints.

Of course security sector reform cannot be separated from the other governance and economic challenges facing the region. Most South Sudanese have not seen much progress in the 5 years since the signing of the CPA. Communities continue to lack access to basic services including water, health, and infrastructure. It is no secret that the Government of South Sudan still has limited capacity, and in some cases limited will, to provide this assistance or manage its own revenues. This lack of will and capacity concerns me particularly because it is closely linked with the growing problem of corruption within the government. A lack of transparency plagues this young government by complicating and undermining efforts to distribute services and reform the security services.

This is not cause for delaying the referendum, as to do so would be a retreat from our commitment as guarantors of the CPA and could be seen as a reason to abrogate the agreement by either party. Instead, it is cause for increasing our efforts in South Sudan and helping the region to reach a basic level of political and economic stability.

I am pleased that the Obama administration is in the process of scaling up our diplomatic and development personnel and activities in South Sudan to prepare for the referendum and its aftermath. I urge other governments to do the same, if they are not already. The regional states and international community all have a stake in facilitating an orderly process and preventing an outbreak of violence. It is in our interest to work together and coordinate our efforts to help the South Sudanese meet the many challenges in front of them.

Finally, as we do this, we should not turn our backs on the other conflicts within Sudan, particularly the situation in Darfur. We have seen in the past how the National Congress Party can effectively manipulate the international community's narrow focus on one region or conflict at the expense of another. Despite some small successes, the situation in Darfur is unresolved and the events of recent weeks have shown that a peace deal remains elusive. The situation could become more difficult and complex to resolve over time, especially if the CPA collapses and the north-south war is reignited.

The Obama administration must maintain its focus on building a credible peace process for Darfur at the same time that it seeks to shore up the CPA. We need to keep the pressure on to ensure there is a cessation of attacks and to begin seriously addressing the legitimate grievances of Darfurians.

Mr. President, in the critical months ahead, we need to have a bold, comprehensive approach toward all of Sudan that brings resources to bear and ensures consistent, high-level engagement from the White House as well as here in Congress. To that end, I will continue to do my part, and I encourage my colleagues to do the same.

ADDITIONAL STATEMENTS

RECOGNIZING THE HARRISON PUBLIC SCHOOL DISTRICT

● Mrs. LINCOLN. Mr. President, I wish to congratulate Harrison Public School District for being named to the national ''GreatSchools'' list by Forbes magazine. Under the leadership of superintendant Jerry Moody, Harrison was named the top public school district in the country for markets of median home price under $100,000. Harrison was the only Arkansas school district to make Forbes' top 10 list.

Harrison received this designation based on criteria including quality of education, affordable housing, and the unemployment rate. Calling Harrison a ''rural gem,'' the magazine commented that ''with its well-developed gifted and talented program and an intimate 12.5-to-1 student-teacher ratio, Harrison offers serious book learning in a mountain idyll.''

Forbes has found out what Harrison residents have known for years: that hard work, dedication, and a commitment to education are integral to a community's success. When students, teachers, administrators and parents work together, great things can be achieved.

Along with all Arkansans, I extend my congratulations to each member of the Harrison community.●

2010 NATIONAL DRUG CONTROL STRATEGY—PM 54

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 the Judiciary:

To the Congress of the United States:

I am pleased to transmit the 2010 National Drug Control Strategy, a blueprint for reducing illicit drug use and its harmful consequences in America. I am committed to restoring balance in our efforts to combat the drug problems that plague our communities. While I remain steadfast in my commitment to continue our strong enforcement efforts, especially along the southwest border, I directed the Office of National Drug Control Policy to reengage in efforts to prevent drug use and addiction and to make treatment available for those who seek recovery. This new, balanced approach will expand efforts for the three critical ways that we can address the drug problem: prevention, treatment, and law enforcement.

Drug use endangers the health and safety of every American, depletes financial and human resources, and deadens the spirit of many of our communities. Whether struggling with an addiction, worrying about a loved one's substance abuse, or being a victim of drug-related crime, millions of people in this country live with the devastating impact of illicit drug use every day. This stark reality demands a new direction in drug policy—one based on common sense, sound science, and practical experience. That is why my new Strategy includes efforts to educate young people who are the most at-risk about the dangers of substance abuse, allocates unprecedented funding for treatment efforts in federally qualified health centers, reinvigorates drug courts and other criminal justice innovations, and strengthens our enforcement efforts to rid our streets of the drug dealers who infect our communities.

I am confident that if we take these needed steps, we will make our country stronger, our people healthier, and our streets safer. If we boost community-based prevention efforts, expand treatment opportunities, strengthen law enforcement capabilities, and work collaboratively with our global partners, we will reduce drug use and its resulting damage.

While I am proud of the new direction described here, a well-crafted strategy is only as successful as its implementation. To succeed, we will need to rely on the hard work, dedication, and perseverance of every concerned American. I look forward to working with the Congress, Federal, State, and local officials, tribal leaders, and citizens across the country as we implement this Strategy and make our communities better places to live, work, and raise our families.

BARACK OBAMA.
THE WHITE HOUSE, *May 11, 2010.*

MESSAGE FROM THE HOUSE

ENROLLED BILLS SIGNED

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2802. An act to provide for an extension of the legislative authority of the Adams Memorial Foundation to establish a commemorative work in honor of former President John Adams and his legacy, and for other purposes.

H.R. 5148. An act to amend title 39, United States Code, to clarify the instances in which the term ''census'' may appear on mailable matter.

H.R. 5160. An act to extend the Caribbean Basin Economic Recovery Act, to provide customs support services to Haiti, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 3347. A bill to extend the National Flood Insurance Program through December 31, 2010.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. COBURN (for himself, Mr. MCCAIN, Mr. FEINGOLD, Mrs. GILLIBRAND, Mr. BENNET, Mr. ENSIGN, Mr. CORKER, and Mr. UDALL of Colorado):

S. 3335. A bill to require Congress to establish a unified and searchable database on a public website for congressional earmarks as called for by the President in his 2010 State of the Union Address to Congress; to the Committee on Homeland Security and Governmental Affairs.

By Mrs. FEINSTEIN (for herself and Mr. BROWN of Ohio):

S. 3336. A bill to amend the Internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance renewable energy resources facilities, conservation and efficiency facilities, and other specified greenhouse gas emission technologies; to the Committee on Finance.

By Ms. LANDRIEU:

S. 3337. A bill to amend the Public Works and Economic Development Administration Act of 1965 to establish a program to provide technical assistance grants for use by organizations in assisting individuals and businesses affected by the Deepwater Horizon oil spill in the Gulf of Mexico; to the Committee on Environment and Public Works.

By Mr. NELSON of Florida:

S. 3338. A bill to amend the Internal Revenue Code of 1986 to provide an investment tax credit for advanced biofuel production property; to the Committee on Finance.

By Mr. KERRY (for himself, Mr. CRAPO, Mr. WYDEN, and Ms. SNOWE):

S. 3339. A bill to amend the Internal Revenue Code of 1986 to provide a reduced rate of excise tax on beer produced domestically by certain small producers; to the Committee on Finance.

By Mr. UDALL of New Mexico:

S. 3340. A bill to create jobs, increase energy efficiency, and promote technology transfer, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CARDIN (for himself, Ms. COLLINS, Mr. AKAKA, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. BINGAMAN, Mr. JOHNSON, Mr. KAUFMAN, Mr. KERRY, Ms. LANDRIEU, Ms. STABENOW, and Mr. WARNER):

S. 3341. A bill to amend title 5, United States Code, to extend eligibility for coverage under the Federal Employees Health Benefits Program with respect to certain adult dependents of Federal employees and annuitants, in conformance with amendments made by the Patient Protection and Affordable Care Act; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DURBIN:

S. 3342. A bill to amend the Richard B. Russell National School Lunch Act to establish a demonstration project to promote collaborations to improve school nutrition; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. LAUTENBERG:

S. 3343. A bill to direct the Secretary of the Interior to establish an annual fee on Federal offshore areas that are subject to a lease for production of oil or natural gas and to establish a fund to reduce pollution and the dependence of the United States on oil; to the Committee on Energy and Natural Resources.

By Mr. WHITEHOUSE (for himself, Mr. MENENDEZ, and Mrs. BOXER):

S. 3344. A bill to establish an independent, nonpartisan commission to investigate the causes and impact of, and evaluate and improve the response to, the explosion, fire, and loss of life on and sinking of the Mobile Drilling Unit Deepwater Horizon and the resulting uncontrolled release of crude oil into the Gulf of Mexico, and to ensure that a similar disaster is not repeated; to the Committee on Energy and Natural Resources .

By Mr. WHITEHOUSE (for himself, Mr. MENENDEZ, and Mr. LEAHY):

S. 3345. A bill to amend title 46, United States Code, to remove the cap on punitive damages established by the Supreme Court in Exxon Shipping Company v. Baker; to the Committee on Commerce, Science, and Transportation.

By Mr. WHITEHOUSE (for himself and Mr. MENENDEZ):

S. 3346. A bill to increase the limits on liability under the Outer Continental Shelf Lands Act; to the Committee on Energy and Natural Resources.

By Mr. VITTER:

S. 3347. A bill to extend the National Flood Insurance Program through December 31, 2010; read the first time.

By Mr. ISAKSON (for himself, Mr. ALEXANDER, Mr. BARRASSO, Mr. COBURN, Mr. DEMINT, Mr. GREGG, Mr. BURR, Mr. ROBERTS, Mr. WICKER, Mr. JOHANNS, Mr. GRASSLEY, Mr. LEMIEUX, Mr. CHAMBLISS, Ms. COLLINS, Mr. HATCH, Mr. VOINOVICH, Mr. CRAPO, Mr. ENZI, Mr. BROWNBACK, Mr. BUNNING, Ms. MURKOWSKI, Mr. CORKER, Mr. SESSIONS, Mr. LUGAR, Mr. THUNE, and Mr. BENNETT):

S.J. Res. 30. A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the National Mediation Board relating to representation election procedures; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 678

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 678, a bill to reauthorize and improve the Juvenile Justice and Delinquency Prevention Act of 1974, and for other purposes.

S. 695

At the request of Ms. SNOWE, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 695, a bill to authorize the Secretary of Commerce to reduce the matching requirement for participants in the Hollings Manufacturing Partnership Program.

S. 941

At the request of Mr. CRAPO, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 941, a bill to reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives, modernize firearm laws and regulations, protect the community from criminals, and for other purposes.

S. 1072

At the request of Mrs. LINCOLN, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. 1072, a bill to amend chapter 1606 of title 10, United States Code, to modify the basis utilized for annual adjustments in amounts of educational assistance for members of the Selected Reserve.

S. 1317

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 1317, a bill to increase public safety by permitting the Attorney General to deny the transfer of firearms or the issuance of firearms and explosives licenses to known or suspected dangerous terrorists.

S. 1645

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 1645, a bill to amend the Agricultural Adjustment Act to require the Secretary of Agriculture to determine the price of all milk used for manufactured purposes, which shall be classified as Class II milk, by using the national average cost of production, and for other purposes.

S. 1709

At the request of Ms. STABENOW, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 1709, a bill to amend the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to establish a grant program to promote efforts to develop, implement, and sustain veterinary services, and for other purposes.

S. 1982

At the request of Mr. BROWN of Ohio, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1982, a bill to renew and extend the provisions relating to the identification of trade enforcement priorities, and for other purposes.

S. 2924

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Ms. KLOBUCHAR) was added as a cosponsor of S. 2924, a bill to reauthorize the Boys & Girls Clubs of America, in the wake of its Centennial, and its programs and activities.

S. 3055

At the request of Mr. CASEY, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 3055, a bill to require the Secretary of Commerce to award grants to municipalities to carry out community greening initiatives, and for other purposes.

S. 3102

At the request of Mr. MERKLEY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. 3102, a bill to amend the miscellaneous rural development provisions of the Farm Security and Rural Investment Act of 2002 to authorize the Secretary of Agriculture to make loans to certain entities that will use the funds to make loans to consumers to implement energy efficiency measures involving structural improvements and investments in cost-effective, commercial off-the-shelf technologies to reduce home energy use.

S. 3201

At the request of Mr. UDALL of Colorado, the name of the Senator from Illinois (Mr. BURRIS) 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. 3211

At the request of Mrs. SHAHEEN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of S. 3211, a bill to amend title XVIII of the Social Security Act to improve access to diabetes self-management training by designating certain certified diabetes educators as certified providers for purposes of outpatient diabetes self-management training services under part B of the Medicare Prorgram.

S. 3255

At the request of Mrs. LINCOLN, the name of the Senator from New York (Mrs. GILLIBRAND) was added as a cosponsor of S. 3255, a bill to amend title XVIII of the Social Security Act to provide coverage for custom fabricated breast prostheses following a mastectomy.

S. 3295

At the request of Mr. SCHUMER, the name of the Senator from North Dakota (Mr. DORGAN) 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. 3297

At the request of Mr. FEINGOLD, the name of the Senator from Maryland (Mr. CARDIN) was added as a cosponsor of S. 3297, a bill to update United States policy and authorities to help advance a genuine transition to democracy and to promote recovery in Zimbabwe.

S. 3308

At the request of Mr. NELSON of Florida, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of 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.

S. 3315

At the request of Ms. COLLINS, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of 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.

S. 3324

At the request of Mr. BROWN of Ohio, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 3324, a bill to amend the Internal Revenue Code of 1986 to extend the qualifying advanced energy project credit.

S. 3326

At the request of Ms. CANTWELL, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 3326, a bill to provide grants to States for low-income housing projects in lieu of low-income housing credits, and to amend the Internal Revenue Code of 1986 to allow a 5-year carryback of the low-income housing credit, and for other purposes.

S. 3329

At the request of Mr. LAUTENBERG, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 3329, a bill to provide triple credits for renewable energy on brownfields, and for other purposes.

S. RES. 410

At the request of Mr. BAYH, the names of the Senator from Oregon (Mr. MERKLEY), the Senator from New York (Mr. SCHUMER), the Senator from Ohio (Mr. VOINOVICH) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. Res. 410, a resolution supporting and recognizing the goals and ideals of ''RV Centennial Celebration Month'' to commemorate 100 years of enjoyment of recreation vehicles in the United States.

S. RES. 511

At the request of Mr. LEAHY, the name of the Senator from Minnesota (Mr. FRANKEN) was added as a cosponsor of S. Res. 511, a resolution commemorating and acknowledging the dedication and sacrifices made by the Federal, State, and local law enforcement officers who have been killed or injured in the line of duty.

AMENDMENT NO. 3730

At the request of Mr. FEINGOLD, the name of the Senator from Ohio (Mr. BROWN) 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. 3736

At the request of Mr. WEBB, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3736 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 Massachusetts (Mr. BROWN), the Senator from Massachusetts (Mr. KERRY) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of amendment No. 3738 proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

At the request of Mr. BINGAMAN, his name was added as a cosponsor of amendment No. 3738 proposed to S. 3217, supra.

AMENDMENT NO. 3746

At the request of Mr. WHITEHOUSE, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of amendment No. 3746 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. 3751

At the request of Mr. NELSON of Florida, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3751 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 Nevada (Mr. ENSIGN), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Wyoming (Mr. BARRASSO), the Senator from Wyoming (Mr. ENZI), the Senator from Indiana (Mr. LUGAR), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Oklahoma (Mr. COBURN), the Senator from Georgia (Mr. ISAKSON) and the Senator from Washington (Ms. CANTWELL) were added as cosponsors of amendment No. 3759 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. 3760

At the request of Mr. VITTER, the names of the Senator from South Carolina (Mr. DEMINT), the Senator from Iowa (Mr. GRASSLEY), the Senator from Utah (Mr. HATCH), the Senator from Arizona (Mr. MCCAIN), the Senator from Kentucky (Mr. BUNNING), the Senator from Idaho (Mr. CRAPO) and the Senator from Idaho (Mr. RISCH) were added as cosponsors of amendment No. 3760 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. 3762

At the request of Mr. LEAHY, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3762 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. 3767

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 3767 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. 3768

At the request of Mr. DURBIN, the name of the Senator from Vermont

(Mr. SANDERS) was added as a cosponsor of amendment No. 3768 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3769

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 3769 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3771

At the request of Mr. DURBIN, the name of the Senator from Vermont (Mr. SANDERS) was added as a cosponsor of amendment No. 3771 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3775

At the request of Mr. WYDEN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3775 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3785

At the request of Mrs. HUTCHISON, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of amendment No. 3785 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. 3804

At the request of Mr. MENENDEZ, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of amendment No. 3804 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. 3808

At the request of Mr. FRANKEN, the names of the Senator from Delaware (Mr. KAUFMAN), the Senator from Iowa (Mr. GRASSLEY) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 3808 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. 3811

At the request of Mr. DORGAN, the name of the Senator from Ohio (Mr. BROWN) was added as a cosponsor of amendment No. 3811 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. 3816

At the request of Mr. CHAMBLISS, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of amendment No. 3816 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. 3818

At the request of Mr. MENENDEZ, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of amendment No. 3818 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. 3839

At the request of Mr. MCCAIN, the names of the Senator from North Carolina (Mr. BURR), the Senator from Texas (Mrs. HUTCHISON) and the Senator from Kansas (Mr. ROBERTS) were added as cosponsors of amendment No. 3839 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. 3877

At the request of Mr. MENENDEZ, the names of the Senator from New York (Mr. SCHUMER) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of amendment No. 3877 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. 3879

At the request of Ms. COLLINS, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of amendment No. 3879 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. 3889

At the request of Mr. AKAKA, the name of the Senator from Delaware (Mr. KAUFMAN) was added as a cosponsor of amendment No. 3889 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. 3897

At the request of Mr. DORGAN, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from Vermont (Mr. SANDERS) were added as cosponsors of amendment No. 3897 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. 3919

At the request of Mr. CONRAD, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of amendment No. 3919 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3922

At the request of Mr. MERKLEY, the names of the Senator from Florida (Mr. NELSON) and the Senator from Vermont (Mr. LEAHY) were added as cosponsors of amendment No. 3922 intended to be proposed to S. 3217, an original bill to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

AMENDMENT NO. 3928

At the request of Mr. BENNET, the names of the Senator from Ohio (Mr. BROWN) and the Senator from Massachusetts (Mr. BROWN) were added as cosponsors of amendment No. 3928 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. 3931

At the request of Mr. MERKLEY, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Virginia (Mr. WEBB) were added as cosponsors of amendment No. 3931 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. 3932

At the request of Mr. DURBIN, the names of the Senator from Vermont (Mr. SANDERS), the Senator from Maryland (Mr. CARDIN) and the Senator from Pennsylvania (Mr. SPECTER) were added as cosponsors of amendment No. 3932 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 Mrs. FEINSTEIN (for herself and Mr. BROWN of Ohio):

S. 3336. A bill to amend the internal Revenue Code of 1986 to provide for the treatment of bonds issued to finance renewable energy resources facilities, conservation and efficiency facilities, and other specified greenhouse gas emission technologies; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise to introduce the Private Activity Renewable Energy Bonds Act, legislation to enable low-cost Private Activity Bond financing for businesses and local governments which seek to create renewable, clean and efficient sources of energy.

The bill is cosponsored by Senator BROWN of Ohio. In the United States House of Representatives, Congressman MIKE THOMPSON has introduced a bipartisan companion bill cosponsored by Representatives DEAN HELLER and MARY BONO MACK.

The bill is supported by a host of business and government leaders and renewable energy companies including the Solar Energy Industries Association, Solar Millennium, Nano Solar, the National Association of Energy Service Companies, EnLink GeoEnergy, Johnson Controls, A123 Systems, the Center for Energy Efficiency and Renewable Technologies, and the U.S. Fuel Cell Council, as well as California Treasurer Bill Lockyer.

The bill provides businesses access to low interest tax free Private Activity Bonds, in order to fund projects that generate renewable energy; produce energy or water savings, or; develop highly efficient vehicles.

To promote such activity in a fiscally responsible manner, the legislation caps the value of bonds at $2.5 billion annually. This represents the investment necessary to replace at least one percent of U.S. electricity generation with renewable sources over the next ten years.

Private Activity Bonds have long been used to generate private involvement and investment in critically important infrastructure for our Nation—from wharves to airports, intercity rail to solid waste disposal facilities and hospitals.

In this century, however, we have new national goals.

Renewable, clean and efficient energy projects will produce jobs, get our economy back-on-track and sustain us as the global leader of a greener century.

These projects, however, require significant front-end capital investment to which the federal government cannot be the sole provider. Private Activity Bonds can prove a critical tool in garnering private investment, because their interest rates typically run a few percent points under commercially available loans.

Investors have long responded to this type of incentive. According to the IRS, Private Activity Bond issuance in 2007 was over $130 billion—supplying capital to our markets, providing the financing to get projects off the ground.

Projects financed in part by Private Activity Bonds include additions to the San Jose and San Francisco International Airports, the Capitol Beltway High Occupancy Vehicle lanes, infrastructure improvements to the Port of Seattle, and upgrades to Children's Hospital of Orange County, Catholic Healthcare West in San Francisco, and many, many important facilities and projects.

With proper access to capital, we've already seen partnerships between States, municipalities and businesses develop into successful renewable energy programs.

In California, Energy Financing Districts finance residents who choose to install clean energy projects such as distributed solar panels on their homes.

The cost of the solar panel installation or other device is paid back through an increase in property tax only for those property owners who choose to participate in the program.

Now, going solar or installing a geothermal heat pump, which once cost tens of thousands of dollars upfront, has little or no upfront cost to the property owner. It is no wonder why 150 of these programs have been established throughout the country.

This low cost solar opportunity is just one example of the type of programs this bill seeks to support. In partnership, businesses and local governments will develop new and innovative was to create the new high quality jobs of the 21st century.

This Congress and this President have outlined goals to ensure this country leads the world in the creation of a robust, green economy.

This bill looks to connect that laudable goal with proven financing tools to get us there by aligning private sector investment power and job growth with good public policy.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3336

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 ''Private Activity Renewable Energy Bonds Act''.

SEC. 2. TREATMENT OF BONDS ISSUED TO FINANCE RENEWABLE ENERGY RESOURCE FACILITIES AND CONSERVATION AND EFFICIENCY FACILITIES AND OTHER SPECIFIED GREENHOUSE GAS EMISSION TECHNOLOGIES.

(a) IN GENERAL.—Section 142(a) of the Internal Revenue Code of 1986 is amended by striking ''or'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting a comma, and by inserting after paragraph (15) the following new paragraphs:

''(16) renewable energy resource facilities,

''(17) conservation and efficiency facilities and projects, or

''(18) high efficiency vehicles and related facilities or projects.''.

(b) RENEWABLE ENERGY RESOURCE FACILITY.—Section 142 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(n) RENEWABLE ENERGY RESOURCE FACILITIES.—For purposes of subsection (a)(16)—

''(1) IN GENERAL.—The term 'renewable energy resource facility' means—

''(A) any facility used to produce electric or thermal energy (including a distributed generation facility) from—

''(i) solar, wind, or geothermal energy,

''(ii) marine and hydrokinetic renewable energy,

''(iii) incremental hydropower,

''(iv) biogas and solids produced in the wastewater treatment process, or

''(v) biomass (as defined in section 203(b)(1) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b)(1))),

''(B) any facility used to produce biogas, or

''(C) any facility or project used for the manufacture of facilities referred to in subparagraph (A) or (B).

''(2) SPECIAL REQUIREMENTS FOR FACILITIES PRODUCING BIOGAS.—

''(A) IN GENERAL.—A facility shall not be treated as described in paragraph (1)(B), unless the biogas produced—

''(i) is of pipeline quality and distributed into a vehicle for transportation or into an intrastate, interstate, or LDC pipeline system, or

''(ii) is used to produce onsite electricity or hydrogen fuel for use in vehicular or stationary fuel cell applications and has a British thermal unit content of at least 500 per cubic foot.

''(B) PIPELINE QUALITY.—For purposes of subparagraph (A)(i), with respect to biogas, the term 'pipeline quality' means biogas with a British thermal unit content of at least 930 per cubic foot.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)) or from geothermal heat pumps.

''(B) MARINE AND HYDROKINETIC RENEWABLE ENERGY.—The term 'marine and hydrokinetic renewable energy' has the meaning given such term in section 45(c)(10).

''(C) INCREMENTAL HYDROPOWER.—The term 'incremental hydropower' means additional energy generated as a result of efficiency improvements or capacity additions to existing hydropower facilities made on or after the date of enactment of this subsection. The term 'incremental hydropower' does not include additional energy generated as a result of operational changes not directly associated with efficiency improvements or capacity additions.

''(D) BIOGAS.—The term 'biogas' means a gaseous fuel derived from landfill, municipal solid waste, food waste, wastewater or biosolids, or biomass (as defined in section 203(b)(1) of the Energy Policy Act of 2005 (42 U.S.C. 15852(b))).

''(4) SPECIAL RULES FOR ENERGY LOAN TAX ASSESSMENT FINANCING.—

''(A) IN GENERAL.—In the case of any renewable recovery energy resource facility provided from the proceeds of a bond secured by any tax assessment loan upon real property, the term 'facility' in paragraph (1) includes—

''(i) a prepayment for the principal purpose of purchasing electricity from renewable energy resource property, and

''(ii) a prepayment of a lease or license of such property, but only if the prepayment agreement provides that it shall not be canceled prior to the expiration of the tax assessment loan.

''(B) TAX ASSESSMENT LOAN.—For purposes of subparagraph (A), the term 'tax assessment loan' shall mean a governmental assessment, special tax, or similar charge upon real property.''.

(c) CONSERVATION AND EFFICIENCY FACILITY OR PROJECT.—Section 142 of the Internal Revenue Code of 1986, as amended by subsection (b), is amended by adding at the end the following new subsection:

''(o) CONSERVATION AND EFFICIENCY FACILITIES AND PROJECTS.—

''(1) IN GENERAL.—For purposes of subsection (a)(17), the term 'conservation and efficiency facility or project' means—

''(A) any facility used for the conservation or the efficient use of energy, including energy efficient retrofitting of existing buildings, or for the efficient storage, transmission, or distribution of energy, including any facility or project designed to implement smart grid technologies (as described in title XIII of the Energy Independence and Security Act of 2007, or individual components of such technologies as listed in section 1301 of such Act),

''(B) any facility used for the conservation of or the efficient use of water, including—

''(i) any facility or project designed to—

''(I) reduce the demand for water,

''(II) improve efficiency in use and reduce losses and waste of water, including water reuse, and

''(III) improve land management practices to conserve water, or

''(ii) any individual component of a facility or project referred to in clause (i), or

''(C) any facility or project used for the manufacture of facilities referred to in subparagraphs (A) and (B).

For purposes of subparagraph (B)(i), facility or project does not include any facility or project that stores water.

''(2) SPECIAL RULES FOR ENERGY LOAN TAX ASSESSMENT FINANCING.—

''(A) IN GENERAL.—In the case of any conservation and efficiency facility or project provided from the proceeds of a bond secured by any tax assessment loan upon real property, the term 'facility' in paragraph (1)(A) includes—

''(i) a prepayment for the principal purpose of purchasing electricity from conservation and efficiency property, and

''(ii) a prepayment of a lease or license of such property, but only if the prepayment agreement provides that it shall not be canceled prior to the expiration of the tax assessment loan.

''(B) TAX ASSESSMENT LOAN.—For purposes of subparagraph (A), the term 'tax assessment loan' shall mean a governmental assessment, special tax or similar charge upon real property.''.

(d) HIGH EFFICIENCY VEHICLES AND RELATED FACILITIES OR PROJECTS.—Section 142 of the Internal Revenue Code of 1986, as amended by subsections (b) and (c), is amended by adding at the end the following new subsection:

''(p) HIGH EFFICIENCY VEHICLES AND RELATED FACILITIES OR PROJECTS.—For purposes of subsection (a)(18)—

''(1) HIGH EFFICIENCY VEHICLES.—The term 'high efficiency vehicle' means any vehicle that will exceed by at least 150 percent the average combined fuel economy for vehicles with substantially similar attributes in the model year in which the production of such vehicle is expected to begin at the facility.

''(2) FACILITIES RELATED TO HIGH EFFICIENCY VEHICLES.—A facility or project is related to a high efficiency vehicle if the facility is any real or personal property to be used in the design, technology transfer, manufacture, production, assembly, distribution, recharging or refueling, or service of high efficiency vehicles.''.

(e) NATIONAL LIMITATION ON AMOUNT OF RENEWABLE ENERGY BONDS.—Section 142 of the Internal Revenue Code of 1986, as amended by subsections (b), (c), and (d), is amended by adding at the end the following new subsection:

''(q) NATIONAL LIMITATION ON AMOUNT OF RENEWABLE ENERGY BONDS.—

''(1) IN GENERAL.—An issue shall not be treated as an issue described in paragraph (16), (17), or (18) of subsection (a) if the aggregate face amount of bonds issued by the State pursuant thereto (when added to the aggregate face amount of bonds previously so issued during the calendar year) exceeds the amount allocated to the State by the Secretary under paragraph (2) for such calendar year.

''(2) ALLOCATION RULES.—

''(A) ALLOCATION AMONG STATES BY POPULATION.—The Secretary shall allocate authority to issue bonds described in paragraph (16), (17), or (18) of subsection (a) to each State by population for each calendar year in an aggregate amount to all States not to exceed $2,500,000,000.

''(B) STATE ALLOCATION.—The State may allocate the amount allocated to the State under subparagraph (A) for any calendar year among facilities or projects described in paragraphs (16), (17), and (18) of subsection (a) in such manner as the State determines appropriate.

''(C) UNUSED RENEWABLE ENERGY BOND CARRYOVER TO BE ALLOCATED AMONG QUALIFIED STATES.—

''(i) IN GENERAL.—Any unused bond allocation for any State for any calendar year under subparagraph (A) shall carryover to the succeeding calendar year and be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

''(ii) UNUSED BOND ALLOCATION CARRYOVER.—For purposes of this subparagraph, unused bond allocations are bond allocations described in subparagraph (A) of any State which remain unused by November 1 of any calendar year.

''(iii) FORMULA FOR ALLOCATION OF UNUSED BOND ALLOCATION CARRYOVERS AMONG QUALIFIED STATES.—The amount allocated under this subparagraph to a qualified State for any calendar year shall bear the same ratio to all States from the preceding calendar year under subparagraph (A), excluding States which are not a qualified State.

''(iv) TIMING OF ALLOCATION.—The Secretary shall allocate the unused bond allocation carried over from the preceding year among qualified States not later than March 1 of the succeeding year.

''(v) QUALIFIED STATE.—For purposes of this subparagraph, the term 'qualified State' means, with respect to a calendar year, any State—

''(I) which allocated its entire bond allocation under subparagraph (A) for the preceding calendar year, and

''(II) for which a request is made (not later than August 1 of the calendar year) to receive an allocation under clause (iii).

''(vi) REPORTING.—States shall report annually to the Secretary on their use of bonds described in paragraph (16), (17), and (18) of subsection (a), including description of projects, amount spent per project, total amount of unused bonds, and expected greenhouse gas or water savings per project with a description of how such savings were calculated. Such reporting shall be submitted not later than November 1 of any calendar year.''.

(f) COORDINATION WITH SECTION 45.—Paragraph (3) of section 45(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''Clause (ii) of subparagraph (A) shall not apply with respect to any facility described in paragraph (16), (17), or (18) of section 142(a).''.

(g) COORDINATION WITH SECTION 45K.—Subparagraph (A) of section 45K(b)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

"Subclause (II) of clause (i) shall not apply with respect to any facility described in paragraph (16), (17), or (18) of section 142(a).".

(h) COORDINATION WITH SECTION 48.—Subparagraph (A) of section 48(a)(4) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence: "Clause (ii) shall not apply with respect to any facility described in paragraph (16), (17), or (18) of section 142(a).".

(i) COORDINATION WITH SECTION 146(g)(3).—Section 146(g)(3) of the Internal Revenue Code of 1986 is amended by striking "or (15)" and inserting "(15), (16), (17), or (18)".

(j) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

Mr. UDALL of New Mexico:

S. 3340. A bill to create jobs, increase energy efficiency, and promote technology transfer, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. UDALL of New Mexico. Mr. President, I rise today to introduce the NIST GREEN JOBS Act, to provide NIST Grants for green jobs, improved energy efficiency, and small business growth.

It has never been easy to be an entrepreneur or small business owner, and this is especially true since the recession began 2 years ago. Many small firms in the manufacturing sector, in particular, have struggled during a time of tight credit markets and reduced consumer demand. In the last 2 years, the manufacturing sector lost over 2 million jobs.

Twenty years ago, when Americans worried about how our small companies would compete globally in the face of stiff competition from Asia, Congress established the Hollings Manufacturing Extension Partnership, MEP, Program to assist small manufacturers.

The MEP program has since helped thousands of small- and medium-sized manufacturers across the nation increase their profit-lines and streamline their business processes through lean manufacturing techniques. The National Institute of Standards and Technology, NIST, is the Federal steward for the nationwide MEP network, which has MEP Centers in all 50 States.

The New Mexico Manufacturing Extension Partnership in Albuquerque was one of the first such centers, and it provides small- and medium-sized manufacturers with the tools they need to grow, improve productivity and expand capacity. Since its creation, the New Mexico MEP has helped create or maintain more than 2,600 jobs in the State and achieve $24 million in annual cost savings for partner companies.

Today, as the U.S. continues to emerge from the worst recession since the Great Depression, the resources and expertise MEP provides manufacturers are more valuable than ever. Our MEP Centers do great work—and I believe they can do even more as companies look for ways to take advantage of new opportunities in a clean energy economy that promotes energy efficiency and independence for our country.

Since manufacturing now plays an increasingly important role in the construction industry, there is an important opportunity for the MEP program to strengthen its support of small manufacturers while also promoting green jobs and energy independence.

Builders today already rely on manufactured components and sub-assemblies. Manufacturing will become even more important to construction as homes are increasingly "assembled" on site from components made in a factory. Now that lean, high-quality manufacturing is applicable to construction, it is not a stretch for MEP Centers to teach the same skills to the construction industry, where small firms are the norm.

Technologies exist today for green building construction and retrofitting that can reduce energy use and greenhouse gas emissions. Yet many small firms, especially in the construction sector, do not have the skills or expertise to take advantage of new technologies to improve the energy efficiency. Moreover, NIST researchers at the Buildings and Fire Research Lab already help develop standards and technologies to improve buildings. Buildings today consume 73 percent of electricity and 40 percent of overall energy.

These companies would benefit from the type of training and business analysis activities that MEP Centers already provide to manufacturers. The MEP system could thus be a powerful and transformational force to create green jobs, increase energy efficiency, and promote technological transfer in the construction industry.

That is why I ask for the support of my Senate colleagues for the NIST GREEN JOBS Act, to fund MEP Center pilot projects for green jobs related to energy efficiency. This proposal builds on provisions already authorized by America COMPETES legislation.

My bill simply broadens this existing competitive grant program for MEP pilot projects to include activities related to energy efficiency. It also allows MEP Centers to extend services to companies in the construction industry working in these areas. Awarded on a competitive basis, these pilot projects could last up to 3 years and would be located in each region of the country. The pilot projects would thus create models for new MEP activities and services that could be replicated at MEP Centers regionally or nationwide.

The NIST GREEN JOBS Act authorizes $7 million in annual funding for 3 years. This funding would allow at least one MEP Center in each region to conduct a pilot project. The MEP Centers would not need to provide local matching funds for these competitively awarded pilot projects.

I believe this modest proposal would be a positive step toward both helping create and retain jobs in the manufacturing sector and improving our Nation's energy independence.

I therefore urge the support of all my colleagues for this legislation.

By Mr. DURBIN:

S. 3342. A bill to amend the Richard B. Russell National School Lunch Act to establish a demonstration project to promote collaborations to improve school nutrition; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DURBIN. Mr. President, childhood obesity is a growing concern in the U.S. and I am pleased that the President and First Lady have decided to tackle this issue with the goal of solving the problem in a generation. Today, one in three children is overweight or obese, which means that they are at a greater risk of developing diabetes, heart disease and cancer over the course of their lives. We are spending nearly $150 billion a year to treat obesity-related medical conditions, and this problem will only become worse if we don't do something about it now.

One way that the Federal Government can play an important role in addressing this problem is by helping to make schools healthier. Students spend an average of nearly 7 hours a day at school, and it is one of the places where kids formally learn and then can practice healthy habits related to nutrition and physical activity. While education is primarily funded by the states, the Federal government plays a significant role in this issue as well because of its funding of the National School Lunch Program. This year, the U.S. Department of Agriculture, USDA, will spend $10.2 billion on the school lunch program, which serves 31 million children across the country every day. In my home State of Illinois, 1.1 million students in over 4,000 schools participate.

The National School Lunch Program was started after World War II, because our leaders then understood the importance of investing in good nutrition to ensure that the country's youth were well nourished and healthy. When President Harry Truman signed the National School Lunch Act, he said that "in the long view, no nation is healthier than its children."

Today, we know that the program is making a real difference in millions of kids' lives, by ensuring they don't go hungry during the school day and are ready to learn. We also know that there are some clear nutritional benefits of the program. USDA reports that research on the school lunches consistently shows that participants consume more milk and vegetables at lunch; have higher vitamin intakes; and consume fewer sweets, sweetened beverages, and snack foods than non-participants.

However, much of the difference in vegetable consumption may be due to a higher consumption of French fries and other potato products, and many lunches contain a higher percentage of calories from fat than currently recommended. USDA's current nutrition standards for school meals have not been updated since 1995 and are not in line with the most recent Dietary Guidelines for Americans. I think we need to take President Truman's words to heart, and make long-term investments in this program to ensure that kids are eating healthy meals.

I support the President's goal of increased funding, so that schools can afford to purchase healthier ingredients to make school lunches. However I know that the nutritional quality of school meals varies greatly across the country, and providing every school with adequate funding to improve their meals will be challenging. Some schools have already shown that even with limited resources they can make real improvements in the nutritional quality of their school meals, and make other changes to make school environments healthier.

I would like to build on that concept, which is why I am pleased today to introduce the Healthy School Partnerships Act of 2010. This bill will create a competitive grant program at USDA to allow public schools to explore innovative, sustainable programs that improve the nutritional profile of school meals and make other improvements to make school environments healthier. The bill authorizes $2 million per year for 5 years to fund collaborations of academic experts, dieticians and nutrition professionals, community partners, and local schools to implement and evaluate innovative models to improve food quality, student choices in food, and healthy school environments. This could include starting programs to improve the nutritional content of school meals; providing more nutrition education; changing school policies to promote greater access to healthier foods and physical activity; training teachers, school administrators and nurses; or making other changes to make school environments healthier. We need grass roots involvement and real-world models to solve the childhood obesity problem going forward, and this bill provides the funding to develop those.

Childhood obesity is a complex problem, and to effectively tackle it we will need the commitment of the public and private sectors. The Healthy Schools Partnerships Act of is one part of the solution. By tapping local resources and expertise, we can promote collaborations and develop sustainable and replicable models for making systemic changes that promote good nutrition and healthy living among students.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3342

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 ''Healthy Schools Partnerships Act of 2010''.

SEC. 2. HEALTHY SCHOOLS PARTNERSHIPS DEMONSTRATION PROGRAM.

Section 18 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769) is amended by adding at the end the following:

''(j) HEALTHY SCHOOLS PARTNERSHIPS DEMONSTRATION PROGRAM.—

''(1) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means a school food authority that demonstrates that the school food authority has collaborated, or will collaborate, with 1 or more local partner organizations (including academic experts, registered dietitians or other nutrition professionals, community partners, or non-profit organizations) to achieve the purposes described in paragraph (2).

''(2) PURPOSES.—The purposes of the demonstration project established under this subsection are—

''(A) to assist schools in improving the nutritional standards of school meals and the overall school environment; and

''(B) to use local resources and expertise to promote collaborations and develop sustainable and replicable models for making systemic changes that promote good nutrition and healthy living among students.

''(3) ESTABLISHMENT.—The Secretary shall establish a demonstration project under which the Secretary shall make grants to eligible entities to fund collaborations of academic experts, nonprofit organizations, registered dietitians or other nutrition professionals, community partners, and local schools to test and evaluate innovative models to improve nutrition education, student decision making, and healthy school environments.

''(4) APPLICATION.—

''(A) IN GENERAL.—An eligible entity shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

''(B) CONTENTS.—In addition to any other requirements of the Secretary, each application shall—

''(i) identify the 1 or more problems that the eligible entity will address;

''(ii) identify the activity that the grant will be used to fund;

''(iii) describe the means by which the activity will improve the health and nutrition of the school environment;

''(iv) list the partner organizations that will participate in the activity funded by the grant; and

''(v) describe the metrics used to measure success in achieving the stated goals.

''(5) PRIORITY.—In making grants under this subsection, the Secretary shall give priority to eligible entities that demonstrate—

''(A) a severe need to improve the school environment, as demonstrated by high numbers of students receiving free or reduced price lunches, high levels of obesity or other indicators of poor health status, and health disparities in the community served by the school;

''(B) a commitment by community partners to make in-kind or cash contributions; and

''(C) the ability to measure results.

''(6) USE OF FUNDS.—An eligible entity shall use a grant received under this subsection—

''(A) to assess the problem of childhood obesity and poor nutrition in the school environment;

''(B) to develop an innovative plan or intervention to address specific causes of the problem in coordination with outside partners, including by developing and testing innovative models to improve student health and nutrition as measured by—

''(i) changes that result in healthier school environments, including more nutritious food being served in cafeterias and available a la carte;

''(ii) increased nutrition education;

''(iii) improved ability of students to identify healthier choices;

''(iv) changes in attitudes of students towards healthier food;

''(v) student involvement in making school environments healthier;

''(vi) increased access to physical activity, physical education, and recess;

''(vii) professional development and continuing education opportunities for school administrators, teachers, and school nurses; and

''(viii) changes in school policies that promote access to healthier food and physical activity;

''(C) to implement the plan or intervention in partnership with outside partners;

''(D) to measure and evaluate effectiveness of the intervention; or

''(E) to assess the sustainability and replicability of this model.

''(7) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,000,000 for each of fiscal years 2011 through 2015.''.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3938. 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.

SA 3939. Mrs. FEINSTEIN (for herself and Mr. LEVIN) 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 3940. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3941. Mrs. McCASKILL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3942. 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 3943. Mr. REED (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 3944. 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 3945. 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 3946. 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 3947. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3948. Mr. HATCH submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3949. Mr. CARPER (for himself, Mr. CORKER, Mr. BAYH, Mr. ENSIGN, Mr. JOHNSON, and Mr. WARNER) 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 3950. Ms. CANTWELL 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 3951. Mr. MENENDEZ (for himself and Mr. BAYH) 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 3952. Mr. SCHUMER 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 3953. Mr. SCHUMER 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 3954. Mr. JOHNSON (for himself and Mr. ENZI) 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 3955. Mr. CORKER (for himself, Mr. GREGG, Mr. LEMIEUX, Mr. COBURN, 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.

SA 3956. Ms. LANDRIEU (for herself, Mr. ISAKSON, Mrs. HAGAN, Mr. WARNER, and 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 3957. 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 3958. Mr. REED (for himself, Mr. JOHNSON, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3959. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3960. Mr. SCHUMER (for himself and 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 3961. Mr. BROWNBACK 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 3962. Mr. MERKLEY (for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr . BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN) 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 3963. 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 3964. Mr. HARKIN (for himself and Ms. CANTWELL) 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 3965. Mr. HARKIN 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 3966. Mr. GRASSLEY submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3967. Mr. BINGAMAN 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 3968. Mr. TESTER (for himself, Mrs. MURRAY, and Mr. BAUCUS) 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 3969. Mr. LEVIN (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 3970. Mr. LEVIN (for himself, Mr. KAUFMAN, Mrs. MCCASKILL, and Mr. WHITEHOUSE) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3971. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3972. Mr. LEVIN (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 3973. Mr. LEVIN (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 3974. Mr. LEVIN (for himself, Mr. KAUFMAN, and 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 3975. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3976. Mr. LEVIN (for himself, Mr. COBURN, Mr. REED, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3977. Mr. LEVIN (for himself, Mr. COBURN, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3978. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. CARDIN, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. BENNETT, and Mr. CRAPO) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3938. 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 1455, after line 25, insert the following:

SEC. 1077. DEPARTMENT OF THE TREASURY STUDY ON ENDING THE CONSERVATORSHIP OF FANNIE MAE, FREDDIE MAC, AND REFORMING THE HOUSING FINANCE SYSTEM.

(a) STUDY REQUIRED.—

(1) IN GENERAL.—The Secretary of the Treasury shall conduct a study of and develop recommendations regarding the options for ending the conservatorship of the Federal National Mortgage Association (in this section referred to as ''Fannie Mae'') and the Federal Home Loan Mortgage Corporation (in this section referred to as ''Freddie Mac''), while minimizing the cost to taxpayers, including such options as—

(A) the gradual wind-down and liquidation of such entities;

(B) the privatization of such entities;

(C) the incorporation of the functions of such entities into a Federal agency;

(D) the dissolution of Fannie Mae and Freddie Mac into smaller companies; or

(E) any other measures the Secretary determines appropriate.

(2) ANALYSES.—The study required under paragraph (1) shall include an analysis of—

(A) the role of the Federal Government in supporting a stable, well-functioning housing finance system, and whether and to what extent the Federal Government should bear risks in meeting Federal housing finance objectives;

(B) how the current structure of the housing finance system can be improved;

(C) how the housing finance system should support the continued availability of mortgage credit to all segments of the market;

(D) how the housing finance system should be structured to ensure that consumers continue to have access to 30-year, fixed rate, pre-payable mortgages and other mortgage products that have simple terms that can be easily understood;

(E) the role of the Federal Housing Administration and the Department of Veterans Affairs in a future housing system;

(F) the impact of reforms of the housing finance system on the financing of rental housing;

(G) the impact of reforms of the housing finance system on secondary market liquidity;

(H) the role of standardization in the housing finance system;

(I) how housing finance systems in other countries offer insights that can help inform options for reform in the United States; and

(J) the options for transition to a reformed housing finance system.

(b) REPORT AND RECOMMENDATIONS.—Not later than January 31, 2011, the Secretary of the Treasury shall submit the report and recommendations required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SA 3939. Mrs. FEINSTEIN (for herself and Mr. LEVIN) 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 699, strike line 20 and insert the following:

''(A) REGISTRATION.—The Commission may adopt rules and regulations requiring registration with the Commission for a foreign board of trade that provides the members of the foreign board of trade 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, including rules and regulations prescribing procedures and requirements applicable to the registration of such foreign boards of trade. For purposes of this paragraph, 'direct access' refers to an explicit grant of authority by a foreign board of trade to an identified member or other participant located in the United States to enter trades directly into the trade matching system of the foreign board of trade.

''(B) LINKED CONTRACTS.—It shall be unlawful

On page 703, line 14, strike ''(B)'' and insert ''(C)''.

On page 703, line 15, strike ''Subparagraph (A)'' and insert ''Subparagraphs (A) and (B)''.

On page 704, line 13, strike ''paragraphs (1) and (2) of subsection (b)'' and insert ''subparagraphs (A) and (B) of subsection (b)(1)''.

SA 3940. Mr. BARRASSO (for himself and Mr. ENZI) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page ______, between lines ____ and ____, insert the following:

SEC. ____. PROHIBITION.

Notwithstanding any other provision of law, no person or corporation, limited partnership, trust, or affiliate of any such entity chartered as a for-profit or nonprofit entity shall be eligible to sell, purchase, or trade carbon derivatives as the result of the establishment by the Federal Government of a carbon market.

SA 3941. Mrs. MCCASKILL (for herself and Mr. KOHL) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''to 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 1455, line 25, strike the period at the end and insert the following: ''.

SEC. 1077. TREATMENT OF REVERSE MORTGAGES.

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

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

(1) include requirements for the purpose of—

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

(B) providing timely, appropriate, and effective disclosures to consumers in connection with a reverse mortgage transaction that incorporate the requirements of section 138 of the Truth in Lending Act (15 U.S.C. 1648), and otherwise are consistent with requirements prescribed by the Director in connection with other consumer mortgage products or services under this title, including—

(i) an annual statement of the total available principal and outstanding balance of the reverse mortgage; and

(ii) a statement at the closing of the reverse mortgage of the total projected cost of the reverse mortgage; and

(C) a determination of the suitability of a reverse mortgage for a consumer, taking into consideration—

(i) whether the mortgagor intends to reside in the property on a long-term basis;

(ii) in the case of a mortgagor who plans to use the funds obtained from the reverse mortgage to purchase an annuity or make an investment—

(I) whether the annuity or investment is in the best interests of the mortgagor;

(II) whether the costs of obtaining such mortgage exceeds the anticipated earnings from such annuity or investment; and

(III) whether the date on which the annuity or investment is scheduled to mature is beyond the life expectancy of the mortgagor;

(iii) if the mortgagor is married or has a dependent, the potential impact of a reverse mortgage on the future economic security of the spouse or dependent of the mortgagor and all tenants of the home;

(iv) whether a reverse mortgage will affect the eligibility of the mortgagor to receive Government benefits;

(v) whether the mortgagor intends to pass the residence to an heir and the ability of such heir to repay the reverse mortgage loan;

(vi) whether a resident of the home who is not the mortgagor could be displaced at the maturity of the reverse mortgage against the wishes of the mortgagor, and, if any such resident is disabled, the consequences of the displacement for such resident; and

(vii) any other circumstances, as the Director may require;

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

(3) provide for an integrated disclosure standard and model disclosures for reverse mortgage transactions, that combines the relevant disclosures required under the Truth in Lending Act (15 U.S.C. 1601 et seq.) and the Real Estate Settlement Procedures Act, with the disclosures required to be provided to consumers for home equity conversion mortgages under section 255 of the National Housing Act (12 U.S.C. 1715z–20);

(4) prohibit any person from advertising a reverse mortgage in a manner that—

(A) is false or misleading;

(B) fails to present equally the risks and benefits of reverse mortgages; or

(C) fails to reveal—

(i) negative facts that are material to a representation made in such advertisement;

(ii) facts relating to the responsibilities of the mortgagor for property taxes, insurance, maintenance, or repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(iii) the consequences of obtaining a reverse mortgage; or

(iv) any forms of default that might lead to foreclosure;

(5) prohibit a mortgagee from requiring or recommending that a mortgagor purchase insurance (except for title, flood, and other peril insurance, as determined by the Director), an annuity, or other similar product in connection with a reverse mortgage;

(6) require that each reverse mortgage provide that prepayment, in whole or in part, may be made without penalty at any time during the period of the mortgage;

(7) require that any mortgagor under a reverse mortgage receive adequate counseling, including—

(A) in the case of a reverse mortgage in which a person was removed from the title to the dwelling, information about—

(i) the consequences of being removed from such title; and

(ii) the consequences upon the death of the mortgagor or a divorce settlement;

(B) general information about the potential consequences of borrowing more funds than are necessary to meet the immediate personal financial goals of the mortgagor;

(C) the responsibilities of the mortgagor relating to property taxes, insurance, maintenance, and repairs and the consequences of failing to meet such responsibilities, including default and foreclosure;

(D) an explanation of the actions that would constitute a default under the terms of the reverse mortgage and how a default might lead to foreclosure; and

(E) any other information that the Director may require; and

(8) require that any person that provides counseling to a mortgagor under a reverse mortgage report to the Bureau any suspected mortgage-related fraud against a mortgagor.

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

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

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

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

SA 3942. 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 74, between lines 2 and 3, insert the following:

(D) PROHIBITION ON COLLECTION OF NONPUBLIC PERSONAL INFORMATION.—Notwithstanding any other provision of law, the Council and the Office of Financial Research may not require the submission of nonpublic personal information (as that term is defined in section 509 of the Gramm-Leach-Bliley Act (12 U.S.C. 6809)) of any customer by any financial company or in any other manner.

SA 3943. Mr. REED (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 1219, after line 25, insert the following:

''(e) OFFICE OF SERVICE MEMBER AFFAIRS.—

''(1) IN GENERAL.—The Director shall establish an Office of Service Member Affairs, which shall be responsible for developing and implementing initiatives for service members and their families intended to—

''(A) educate and empower service members and their families to make better informed decisions regarding consumer financial products and services;

''(B) coordinate with the unit of the Bureau established under subsection (b)(3), in order to monitor complaints by service members and their families and responses to those complaints by the Bureau or other appropriate Federal or State agency; and

''(C) coordinate efforts among Federal and State agencies, as appropriate, regarding consumer protection measures relating to consumer financial products and services offered to, or used by, service members and their families.

''(2) COORDINATION.—

''(A) REGIONAL SERVICES.—The Director is authorized to assign employees of the Bureau as may be deemed necessary to conduct the business of the Office of Service Member Affairs, including by establishing and maintaining the functions of the Office in regional offices of the Bureau located near military bases, military treatment facilities, or other similar military facilities.

''(B) AGREEMENTS.—The Director is authorized to enter into memoranda of understanding and similar agreements with the Department of Defense, including any branch or agency as authorized by the department, in order to carry out the business of the Office of Service Member Affairs.

''(3) DEFINITION.—As used in this subsection, the term 'service member' means any member of the United States Armed Forces and any member of the National Guard or Reserves.''.

SA 3944. 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 1089, strike line 6 and all that follows through ''SEC. 973.''

SA 3945. 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 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) EXEMPTIONS FOR CERTAIN NONPROFIT MORTGAGE LOAN ORIGINATORS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, may jointly issue rules to exempt from the requirements under subsection (a)(2), mortgage loan originators that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(2) DETERMINING FACTORS.—The Federal banking agencies shall ensure that—

(A) the lending activities of a mortgage loan originator that receives an exemption under this subsection do not threaten the safety and soundness of the banking system of the United States; and

(B) a mortgage loan originator that receives an exemption under this subsection—

(i) is not compensated based on the number or value of residential mortgage loan applications accepted, offered, or negotiated by the mortgage loan originator;

(ii) does not offer residential mortgage loans that have an interest rate greater than zero percent;

(iii) does not gain a monetary profit from any residential mortgage product or service provided;

(iv) has the primary purpose of serving low income housing needs;

(v) has not been specifically prohibited, by statute, from receiving Federal funding; and

(vi) meets any other requirements that the Federal banking agencies jointly determine are appropriate for ensuring that a mortgage loan originator that receives an exemption under this subsection does not threaten the safety and soundness of the banking system of the United States.

(3) REPORTS REQUIRED.—Before the issuance of final rules under subsection (a), and annually thereafter, 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) identifies the mortgage loan originators that receive an exemption under this subsection; and

(B) for each mortgage loan originator identified under subparagraph (A), the rationale for providing an exemption.

(4) UPDATES TO EXEMPTIONS.—The Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury—

(A) shall review the exemptions established under this subsection not less frequently than every 2 years; and

(B) based on the review under subparagraph (A), may revise the standards established under this subsection, as the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, determine to be necessary.

(g) RULES OF CONSTRUCTION.—Nothing in this section may be construed to permit—

(1) 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; or

(2) the Federal banking agencies to issue an exemption under subsection (f) that is not on a case-by-case basis.

(h) 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 Department of Veterans Affairs, 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. STUDY ON FEDERAL HOUSING ADMINISTRATION UNDERWRITING STANDARDS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study evaluating whether the underwriting criteria used by the Federal Housing Administration are sufficient to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) down payment requirements for Federal Housing Administration borrowers;

(B) default rates of mortgages insured by the Federal Housing Administration;

(C) characteristics of Federal Housing Administration borrowers who are most likely to default;

(D) taxpayer exposure to losses incurred by the Federal Housing Administration;

(E) the impact of the market share of the Federal Housing Administration on efforts to sustain a viable private mortgage market; and

(F) any other factors that Comptroller General determines are appropriate.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) that includes recommendations for statutory improvements to be made to the underwriting criteria used by the Federal Housing Administration, to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

SEC. 944.

SA 3946. 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 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;

(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 Department of Veterans Affairs, the Federal Housing Administration, and 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 3947. Mr. HATCH 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 title II, insert the following:

SEC. _____. PREVENT THE DISSOLUTION OF ANY LARGE FINANCIAL COMPANY BY THE FDIC IF THE DISSOLUTION WOULD INCREASE THE DEFICIT.

The Corporation may not dissolve any large financial company unless the dissolution has been reviewed by the Director of the Office of Management and Budget and the Director has certified that the dissolution will not increase the Federal deficit.

SA 3948. Mr. HATCH 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 title X, insert the following:

SEC. _____. PREVENT COMPLIANCE COSTS FOR BCFP REGULATION FROM BEING PASSED TO THE CONSUMER.

The Bureau of Consumer Financial Protection may not adopt any regulation unless the regulation has been reviewed by the Director of the Office of Management and Budget and the Director has certified that the regulation will not bear any costs onto consumers.

SA 3949. Mr. CARPER (for himself, Mr. CORKER, Mr. BAYH, Mr. ENSIGN, Mr. JOHNSON, and Mr. WARNER) 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 1315, strike line 18, and all that follows through page 1325, line 20 and insert the following:

''(B) the State consumer financial law is preempted in accordance with the legal standards of the decision of the Supreme Court in Barnett Bank v. Nelson (517 U.S. 25

(1996)), and any preemption determination under this subparagraph may be made by a court or by regulation or order of the Comptroller of the Currency, on a case-by-case basis, in accordance with applicable law; 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) 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.

''(e) 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.

''(f) 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.

''(g) 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.—In accordance with the decision of the Supreme Court of the United States in Cuomo v. Clearing House Assn., L. L. C., 5 (129 S. Ct. 2710 (2009)), no provision of this title which relates to visitorial powers or otherwise limits or restricts the visitorial authority 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 an action in a court of appropriate jurisdiction to enforce an applicable nonpreempted State law against a national bank, as authorized by such law, and to seek relief as authorized by such law.

''(2) EXCLUSION.—The powers granted to State attorneys general and State regulators under section 1042 of the Restoring American Financial Stability Act of 2010 shall not apply to any national bank, or any subsidiary thereof, regulated by the Office of the Comptroller of the Currency.

''(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.—The provisions of sections 5136C(j) of the Revised Statutes of the United States shall apply to Federal savings associations, and any subsidiary thereof, to the same extent and in the same manner as if such savings associations, or subsidiaries thereof, were national banks or subsidiaries of national banks, respectively.

SA 3950. Ms. CANTWELL 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 ''to 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 706, line 5, strike ''transaction'' and all that follows through the period on line 9, and insert the following: ''transaction to meet the definition of a swap under section 1a.''.

SA 3951. Mr. MENENDEZ (for himself and Mr. BAYH) 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 ''to 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 615, line 18, strike ''all'' and all that follows through line 21, and insert the following: ''and the registered swap data repositories all information that is determined by the Commission to be necessary for the Commission and each of the swap data repositories to perform their respective responsibilities under this Act''.

On page 623, line 12, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 624, line 18, strike ''With'' and all that follows through ''subsection (h),'' on line 22, and insert the following: ''The registered swap data repositories or''.

On page 625, strike line 2, and insert the following: ''swap trading volumes and positions for both cleared and uncleared trades.''.

On page 625, line 3, strike ''With respect'' and insert ''Subject to subparagraph (E), with respect''.

On page 625, line 6, strike ''(10)'' and insert ''(9)''.

On page 630, line 14, insert ''on an aggregate basis for both cleared and uncleared trades'' after ''swap data''.

On page 637, strike line 17 and all that follows through page 638, line 12.

On page 810, line 22, after the first period, insert the following:

''(m) DUTY OF CLEARING AGENCY.—Each clearing agency that clears security-based swaps shall provide to the Commission and the registered security-based swap data repositories all information that is determined by the Commission to be necessary for the Commission and each of the security-based swap data repositories to perform their respective responsibilities under this Act.

On page 835, line 7, strike ''In this paragraph'' and insert ''Subject to subparagraph (E), in this paragraph''.

On page 836, line 14, strike ''With'' and all that follows through ''section 3C(a),'' on line 18, and insert the following: ''The registered security-based swap data repositories or''.

On page 836, strike lines 23 and 24, and insert the following: ''security-based swap trading volumes and positions for both cleared and uncleared trades.''.

On page 837, lines 3 and 4, strike ''but are subject to the requirements of section 3C(a)(8)'' and insert ''pursuant to section 3C(a)(9)''.

On page 842, line 9, before the semicolon insert ''on an aggregate basis for both cleared and uncleared trades, including compliance and frequency of end user clearing exemption claims by individual and affiliated entities''.

On page 883, strike line 7 and all that follows through page 884, line 9.

SA 3952. Mr. SCHUMER 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 510, strike lines 1 through 7.

On page 525, strike lines 5 through 9.

SA 3953. Mr. SCHUMER 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 553, strike line 18 and all that follows through page 554, line 2, and insert the following:

''(iii) REPORTING.—All foreign exchange swaps and foreign exchange forwards shall be reported to a registered swap data repository described under section 21 within such time period as the Commission may by rule or regulation prescribe.''.

On page 555, line 12, strike '', calculates, prepares, or'' and insert ''and''.

On page 555, line 13, strike ''transactions or''.

On page 555, line 14, strike ''and conditions''.

On page 555, line 15, before the period insert ''for the purpose of providing a centralized record-keeping facility for swaps''.

On page 575, line 5, strike ''such a swap either''.

On page 575, line 6, strike ''or'' and all that follows through ''4r'' on line 8.

On page 575, line 24, strike ''or the Commission''.

On page 576, lines 7 and 8, strike ''or the Commission''.

On page 615, line 18, strike ''all'' and all that follows through line 21, and insert the following: ''and the registered swap data repositories all information that is determined by the Commission to be necessary for the Commission and each of the swap data repositories to perform their respective responsibilities under this Act''.

On page 624, lines 21 through 23, strike ''or the Commission under subsection (h), the Commission'' and insert '', the swap data repository''.

On page 627, between lines 20 and 21, insert the following:

''(2) REPOSITORY FOR EACH ASSET CLASS.—

''(A) REGISTRATION.—The Commission shall register at least 1 swap data repository for each asset class of a swap, or of a group, category, type, or class of swaps.

''(B) RULEMAKING.—If more than 1 such swap data repository exists, the Commission shall by rule provide for—

''(i) the reporting of consistent data by each registered swap data repository; and

''(ii) timely access, by the Commission and the public, to the data collected and maintained by each such registered swap data repository.''.

On page 627, line 21, strike ''(2)'' and insert ''(3)''.

On page 627, line 25, strike ''(3)'' and insert ''(4)''.

On page 628, between lines 9 and 10, insert the following:

''(B) ADDITIONAL CORE PRINCIPLES.—The Commission may develop additional core principles applicable to swap data repositories, and in developing such additional core principles, the Commission may conform such core principles to reflect evolving United States and international standards.''.

On page 628, line 10, strike ''(B)'' and insert ''(C)''.

On page 628, between lines 18 and 19, insert the following:

''(1) CONSULTATION WITH OTHER REGULATORS.—The Commission shall consult with the Securities and Exchange Commission, and the appropriate Federal banking agencies or the appropriate governmental agencies prior to prescribing standards under this section.''.

On page 628, line 19, strike ''(1)'' and insert ''(2)''.

On page 628, line 23, strike ''(2)'' and insert ''(3)''.

On page 629, line 3, strike ''(3)'' and insert ''(4)''.

On page 629, strike lines 8 through 19, and insert the following:

''(5) INFORMATION ACCESS FOR THE SECURITIES AND EXCHANGE COMMISSION.—The Securities and Exchange Commission shall have direct access to registered swap data repositories that accept data on security-based swap agreements.''.

On page 630, lines 21 through 23, strike '', and after notifying the Commission of the request,''.

On page 631, line 18, strike ''AND INDEMNIFICATION AGREEMENT''.

On page 631, line 20, strike ''above—'' and all that follows through ''the swap'' on line 21, and insert ''under subsection (c)(7) the swap''.

On page 631, line 25, strike ''; and'' and insert a period.

On page 632, strike lines 1 through 4.

On page 635, between lines 23 and 24, insert the following:

''(h) ACCESS TO SWAP DATA REPOSITORY SERVICES.—

''(1) COMMISSION REVIEW.—Any prohibition or limitation to any person on access to services offered, directly or indirectly, by a registered swap data repository shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within 30 days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for a hearing on the question of the stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the stay.

''(2) COMMISSION ACTION.—In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered swap data repository, if the Commission finds after notice and opportunity for a hearing, that such prohibition or limitation is consistent with the provisions of this section, and the rules and regulations thereunder, and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of this section, the Commission, by order, shall set aside the prohibition or limitation, and require the registered swap data repository to permit such person access to the services offered by the registered swap data repository to which the prohibition or limitation applied.

''(i) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations upon the activities, functions, or operations of, suspend for a period not exceeding 12 months the registration of, or revoke the registration of, any such swap data repository, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or revocation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this section, and that such swap data repository has violated or is unable to comply with any provision of this section, or the rules and regulations thereunder.''.

On page 635, line 24, strike ''(h)'' and insert ''(j)''.

On page 636, line 10, strike ''reported to—'' and all that follows through ''a swap'' on line 11, and insert ''reported to a swap''.

On page 636, line 12, strike ''; or'' and insert a period.

On page 636, strike lines 13 through 17.

On page 637, line 2, strike ''or the Commission''.

On page 791, line 11, strike ''either''.

On page 791, line 13, strike '', or'' and all that follows through ''13A'' on line 15.

On page 792, lines 4 and 5, strike ''or the Commission''.

On page 792, line 10, strike ''or the Commission''.

On page 801, lines 22 and 23, strike ''or the Commission under subsection (a)''.

On page 810, line 22, after the first period, insert the following:

''(m) DUTY OF CLEARING AGENCY.—Each clearing agency that clears security-based swaps shall provide to the Commission and the registered security-based swap data repositories all information that is determined by the Commission to be necessary for the Commission and each of the security-based swap data repositories to perform their respective responsibilities under this Act.''.

On page 812, line 16, before the semicolon insert ''and this title''.

On page 836, lines 17 through 19, strike ''or the Commission under section 3C(a), the Commission shall'' and insert '', the security-based swap data repository shall''.

On page 839, between lines 19 and 20, insert the following:

''(2) REPOSITORY FOR EACH ASSET CLASS.—

''(A) REGISTRATION.—The Commission shall register at least 1 security-based swap data repository for each asset class of a security-based swap, or of a group, category, type, or class of security-based swaps.

''(B) RULEMAKING.—If more than 1 such security-based swap data repository exists, the Commission shall by rule provide for—

''(i) the reporting of consistent data by each registered security-based swap data repository; and

''(ii) timely access, by the Commission and the public, to the data collected and maintained by each such registered security-based swap data repository.''.

On page 839, line 20, strike ''(2)'' and insert ''(3)''.

On page 839, line 24, strike ''(3)'' and insert ''(4)''.

On page 840, between lines 8 and 9, insert the following:

''(B) ADDITIONAL CORE PRINCIPLES.—The Commission may develop additional core principles applicable to security-based swap data repositories, and in developing such additional core principles, the Commission may conform such core principles to reflect evolving United States and international standards.''.

On page 840, line 9, strike ''(B)'' and insert ''(C)''.

On page 840, line 18, strike ''(4)'' and insert ''(5)''.

On page 840, between lines 18 and 19, insert the following:

''(A) CONSULTATION WITH REGULATORS.—The Commission shall consult with the Commodity Futures Trading Commission, and the appropriate Federal banking agencies or the appropriate governmental agencies prior to prescribing standards under this subsection.''.

On page 840, line 19, strike ''(A)'' and insert ''(B)''.

On page 840, line 24, strike ''(B)'' and insert ''(C)''.

On page 841, line 3, strike ''(C)'' and insert ''(D)''.

On page 842, lines 16 through 18, strike '', and after notifying the Commission of the request,''.

On page 843, lines 11 and 12, strike ''AND INDEMNIFICATION''.

On page 843, line 15, strike ''(G)—'' and all that follows through ''the security-based swap'' on line 16, and insert ''(G) the security-based swap''.

On page 843, line 22, strike ''; and'' and insert a period.

On page 843, strike line 23 and all that follows through page 844, line 2.

On page 848, between lines 12 and 13, insert the following:

''(9) ACCESS TO SECURITY-BASED SWAP DATA REPOSITORY SERVICES.—

''(A) COMMISSION REVIEW.—Any prohibition or limitation to any person on access to services offered, directly or indirectly, by a registered security-based swap data repository shall be subject to review by the Commission on its own motion, or upon application by any person aggrieved thereby filed within 30 days after such notice has been filed with the Commission and received by such aggrieved person, or within such longer period as the Commission may determine. Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of such prohibition or limitation, unless the Commission otherwise orders, summarily or after notice and opportunity for a hearing on the question of the stay (which hearing may consist solely of the submission of affidavits or presentation of oral arguments). The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the stay.

''(B) COMMISSION ACTION.—In any proceeding to review the prohibition or limitation of any person in respect of access to services offered by a registered security-based swap data repository, if the Commission finds after notice and opportunity for a hearing, that such prohibition or limitation is consistent with the provisions of this section, and the rules and regulations thereunder, and that such person has not been discriminated against unfairly, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such prohibition or limitation imposes any burden on competition not necessary or appropriate in furtherance of this section, the Commission, by order, shall set aside the prohibition or limitation, and require the registered security-based swap data repository to permit such person access to the services offered by the registered security-based swap data repository to which the prohibition or limitation applied.

''(10) ADMINISTRATIVE PROCEEDING AUTHORITY.—The Commission, by order, may censure or place limitations upon the activities, functions, or operations of, suspend for a period not exceeding 12 months the registration of, or revoke the registration of, any such security-based swap data repository, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or revocation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this section, and that such security-based swap data repository has violated or is unable to comply with any provision of this section, or the rules and regulations thereunder.''.

On page 848, line 13, strike ''(9)'' and insert ''(11)''.

On page 881, line 19, strike ''reported to—'' and all that follows through ''a security-based swap'' on line 20, and insert ''reported to a security-based swap''.

On page 881, line 21, strike ''; or'' and insert a period.

On page 881, strike line 22 and all that follows through page 882, line 2.

On page 882, lines 14 and 15, strike ''or the Commission''.

SA 3954. Mr. JOHNSON (for himself and Mr. ENZI) 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 370, between lines 13 and 14, insert the following:

SEC. 333. TEMPORARY EXTENSION OF THE TRANSACTION ACCOUNT GUARANTEE PROGRAM.

(a) TRANSACTION ACCOUNT GUARANTEE PROGRAM EXTENSION.—Section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)) is amended—

(1) in subparagraph (B)—

(A) by striking ''The net amount'' and inserting the following:

''(i) IN GENERAL.—Except as provided in clause (ii), the net amount''; and

(B) by adding at the end the following:

''(ii) INSURANCE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS.—The Corporation shall fully insure the net amount that a depositor at an insured depository institution maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when determining the net amount due to such a depositor under clause (i).

''(iii) 'NONINTEREST-BEARING TRANSACTION ACCOUNT' DEFINED.—For purposes of this subparagraph, the term 'noninterest-bearing transaction account' means—

''(I) a deposit or account maintained at an insured depository institution—

''(aa) with respect to which interest is neither accrued nor paid;

''(bb) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar means for the purpose of making payments or transfers to third parties; and

''(cc) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

''(II) a trust account established by an attorney on behalf of a client, commonly referred to as an 'Interest on Lawyers Trust Account' or 'IOLTA'.''; and

(2) in subparagraph (C), by striking ''subparagraph (B)'' and inserting ''subparagraph (B)(i)''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2011.

(c) PROSPECTIVE REPEAL.—Effective January 1, 2013, section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)), as amended by subsection (a), is amended—

(1) in subparagraph (B)—

(A) by striking ''DEPOSIT.—'' and all that follows through ''clause (ii), the net amount'' and inserting ''DEPOSIT.—The net amount''; and

(B) by striking clauses (ii) and (iii); and

(2) in subparagraph (C), by striking ''subparagraph (B)(i)'' and inserting ''subparagraph (B)''.

SEC. 334. IMPROVEMENTS TO THE DEPOSIT INSURANCE FUND.

Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in subsection (b)(3)(B)(i), by striking ''1.5 percent'' and inserting ''1.75 percent''; and

(2) in subsection (e)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''1.5'' each place that term appears and inserting ''1.75'';

(ii) by striking subparagraphs (B), (C), (E), (F), and (G);

(iii) by redesignating subparagraph (D) as subparagraph (C); and

(iv) by inserting after subparagraph (A) the following:

''(B) LIMITATION.—The Board of Directors may, in the sole discretion of the Board of Directors, suspend or limit the declaration or payment of dividends under subparagraph (A).''; and

(B) in paragraph (4), by striking ''paragraphs (2)(D)'' and inserting ''paragraphs (2)(C)''.

SEC. 335. ENHANCED ACCESS TO INFORMATION FOR DEPOSIT INSURANCE PURPOSES.

Section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817) is amended—

(1) in subsection (a)(2)(B), by striking ''agreement'' and inserting ''consultation''; and

(2) in subsection (b)(1)(E)—

(A) in clause (i), by striking ''such as'' and inserting ''including''; and

(B) by striking clause (iii).

SA 3955. Mr. CORKER (for himself, Mr. GREGG, Mr. LEMIEUX, Mr. COBURN, 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; 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) EXEMPTIONS FOR CERTAIN NONPROFIT MORTGAGE LOAN ORIGINATORS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, may jointly issue rules to exempt from the requirements under subsection (a)(2), mortgage loan originators that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(2) DETERMINING FACTORS.—The Federal banking agencies shall ensure that—

(A) the lending activities of a mortgage loan originator that receives an exemption under this subsection do not threaten the safety and soundness of the banking system of the United States; and

(B) a mortgage loan originator that receives an exemption under this subsection—

(i) is not compensated based on the number or value of residential mortgage loan applications accepted, offered, or negotiated by the mortgage loan originator;

(ii) does not offer residential mortgage loans that have an interest rate greater than zero percent;

(iii) does not gain a monetary profit from any residential mortgage product or service provided;

(iv) has the primary purpose of serving low income housing needs;

(v) has not been specifically prohibited, by statute, from receiving Federal funding; and

(vi) meets any other requirements that the Federal banking agencies jointly determine are appropriate for ensuring that a mortgage loan originator that receives an exemption under this subsection does not threaten the safety and soundness of the banking system of the United States.

(3) REPORTS REQUIRED.—Before the issuance of final rules under subsection (a), and annually thereafter, 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) identifies the mortgage loan originators that receive an exemption under this subsection; and

(B) for each mortgage loan originator identified under subparagraph (A), the rationale for providing an exemption.

(4) UPDATES TO EXEMPTIONS.—The Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury—

(A) shall review the exemptions established under this subsection not less frequently than every 2 years; and

(B) based on the review under subparagraph (A), may revise the standards established under this subsection, as the Federal banking agencies, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, determine to be necessary.

(g) RULES OF CONSTRUCTION.—Nothing in this section may be construed to permit—

(1) 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; or

(2) the Federal banking agencies to issue an exemption under subsection (f) that is not on a case-by-case basis.

(h) 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 Department of Veterans Affairs, 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. STUDY ON FEDERAL HOUSING ADMINISTRATION UNDERWRITING STANDARDS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study evaluating whether the underwriting criteria used by the Federal Housing Administration are sufficient to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

(2) ISSUES TO BE STUDIED.—In conducting the study under paragraph (1), the Comptroller General shall evaluate—

(A) down payment requirements for Federal Housing Administration borrowers;

(B) default rates of mortgages insured by the Federal Housing Administration;

(C) characteristics of Federal Housing Administration borrowers who are most likely to default;

(D) taxpayer exposure to losses incurred by the Federal Housing Administration;

(E) the impact of the market share of the Federal Housing Administration on efforts to sustain a viable private mortgage market; and

(F) any other factors that Comptroller General determines are appropriate.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) that includes recommendations for statutory improvements to be made to the underwriting criteria used by the Federal Housing Administration, to ensure the solvency of the Mutual Mortgage Insurance Fund of the Federal Housing Administration and the safety and soundness of the banking system of the United States.

SEC. 944.

SA 3956. Ms. LANDRIEU (for herself, Mr. ISAKSON, Mrs. HAGAN, Mr. WARNER, and 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 1047, strike line 4 and all that follows through line 20 and insert the following:

''(i) not less than 5 percent of the credit risk for any asset—

''(I) that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer; or

''(II) that is a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if 1 or more of the assets that collateralize the asset-backed security are not qualified residential mortgages; or

''(ii) less than 5 percent of the credit risk for an asset that is not a qualified residential mortgage that is transferred, sold, or conveyed through the issuance of an asset-backed security by the securitizer, if the originator of the asset meets the underwriting standards prescribed under paragraph (2)(B);

''(C) specify—

''(i) the permissible forms of risk retention for purposes of this section;

''(ii) the minimum duration of the risk retention required under this section; and

''(iii) that a securitizer is not required to retain any part of the credit risk for an asset that is transferred, sold or conveyed through the issuance of an asset-backed security by the securitizer, if all of the assets that collateralize the asset-backed security are qualified residential mortgages;

On page 1051, between lines 3 and 4, insert the following:

''(4) EXEMPTION FOR QUALIFIED RESIDENTIAL MORTGAGES.—

''(A) IN GENERAL.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly issue regulations to exempt qualified residential mortgages from the risk retention requirements of this subsection.

''(B) QUALIFIED RESIDENTIAL MORTGAGE.—The Federal banking agencies, the Commission, the Secretary of Housing and Urban Development, and the Director of the Federal Housing Finance Agency shall jointly define the term 'qualified residential mortgage' for purposes of this subsection, taking into consideration underwriting and product features that historical loan performance data indicate result in a lower risk of default, such as—

''(i) documentation and verification of the financial resources relied upon to qualify the mortgagor;

''(ii) standards with respect to—

''(I) the residual income of the mortgagor after all monthly obligations;

''(II) the ratio of the housing payments of the mortgagor to the monthly income of the mortgagor;

''(III) the ratio of total monthly installment payments of the mortgagor to the income of the mortgagor;

''(iii) mitigating the potential for payment shock on adjustable rate mortgages through product features and underwriting standards;

''(iv) mortgage guarantee insurance obtained at the time of origination for loans with combined loan-to-value ratios of greater than 80 percent; and

''(v) prohibiting or restricting the use of balloon payments, negative amortization, prepayment penalties, interest-only payments, and other features that have been demonstrated to exhibit a higher risk of borrower default.

''(5) CONDITION FOR QUALIFIED RESIDENTIAL MORTGAGE EXEMPTION.—The regulations issued under paragraph (4) shall provide that an asset-backed security that is collateralized by tranches of other asset-backed securities shall not be exempt from the risk retention requirements of this subsection.

''(6) CERTIFICATION.—The Commission shall require an issuer to certify, for each issuance of an asset-backed security collateralized exclusively by qualified residential mortgages, that the issuer has evaluated the effectiveness of the internal supervisory controls of the issuer with respect to the process for ensuring that all assets that collateralize the asset-backed security are qualified residential mortgages.

SA 3957. 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 62, strike lines 8 through 10 and insert the following:

(2) the term ''financial company'' has the same meaning as in title II, and includes—

(A) an insured depository institution, an insurance company, and a nonbank financial company, and any subsidiary thereof; and

(B) any other entity (and any subsidiary thereof)—

(i) as determined by the Director, based on the size, scale, scope, concentration, activities, interconnectedness, or management of critical data, such that the entity could individually or as a group threaten the stability of the United States financial system; and

(ii) that is not excluded from such definition by a 2/3 vote of the Council;

On page 62, line 16, strike ''(5) the'' and insert the following:

(5) the term ''financial transaction'' means the explicit or implicit creation of a financial contract, where at least one of the counterparties is required to report to the Office;

(6) the

On page 62, line 21, strike ''(6)'' and insert ''(7)''.

On page 63, line 8, strike ''(7)'' and insert ''(8)''.

On page 63, line 13, strike ''(8)'' and insert ''(9)''.

On page 69, beginning on line 7, strike ''and member agencies'' and insert '', member agencies, and the Bureau of Economic Analysis''.

On page 70, between lines 12 and 13, insert the following:

(3) REGULATION OF FINANCIAL COMPANIES NOT UNDER COUNCIL MEMBER AGENCY JURISDICTION.—The regulations of the Office shall apply directly to reporting financial companies that are not otherwise under the jurisdiction of a Council member agency.

On page 73, between lines 20 and 21, insert the following:

(iii) COLLECTION OF FINANCIAL TRANSACTION AND POSITION DATA.—The Office shall collect, on a schedule determined by the Director, in consultation with the Council, comprehensive financial transaction data and position data from financial companies.

SA 3958. Mr. REED (for himself, Mr. JOHNSON, and Mr. BROWN of Ohio) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 384, strike line 1 and all that follows through page 385, line 15.

On page 385, line 16, strike ''**409**'' and insert ''**407**''.

On page 386, strike line 10 and all that follows through page 387, line 2 and insert the following:

SEC. 408. STATE AND FEDERAL RESPONSIBILITIES; ASSET THRESHOLD FOR FEDERAL REGISTRATION OF INVESTMENT ADVISERS.

Section 203A(a) of the of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

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

''(2) TREATMENT OF MID-SIZED INVESTMENT ADVISERS.—

''(A) IN GENERAL.—No investment adviser described in subparagraph (B) shall register under section 203, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940, or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 5 or more States, then the adviser may register under section 203.

''(B) COVERED PERSONS.—An investment adviser described in this subparagraph is an investment adviser that—

''(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

''(ii) has assets under management between—

''(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

''(II) $100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this title.''.

On page 387, line 3, strike ''**411**'' and insert ''**409**''

On page 387, line 13, strike ''**412**'' and insert ''**410**''.

On page 388, line 4, strike ''**413**'' and insert ''**411**''.

On page 388, line 16, strike ''**414**'' and insert ''**412**''.

On page 389, line 3, strike ''**415**'' and insert ''**413**''.

On page 390, line 1, strike ''**416**'' and insert ''**414**''.

SA 3959. Mrs. MURRAY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, 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 441, strike line 8 and all that follows through ''Section'' on line 9 and insert the following:

(e) NOTICE PROCEDURES FOR ACQUISITIONS OF NONBANKS.—Section

On page 441, strike line 15 and all that follows through page 442, line 12.

On page 501, line 15, strike the second period and insert the following: ''.

SEC. 621. INTERSTATE MERGER TRANSACTIONS.

(a) INTERSTATE MERGER TRANSACTIONS.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended by adding at the end the following:

''(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

''(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

''(C) In this paragraph—

''(i) the term 'interstate merger transaction' means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

''(ii) the term 'home State' means—

''(I) with respect to a national bank, the State in which the main office of the bank is located;

''(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

''(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.''.

(b) ACQUISITIONS BY BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843) is amended—

(A) in subsection (i), by adding at the end the following:

''(8) INTERSTATE ACQUISITIONS.—

''(A) IN GENERAL.—The Board may not approve an application by a bank holding company to acquire an insured depository institution under subsection (c)(8) or any other provision of this Act if—

''(i) the home State of such insured depository institution is a State other than the home State of the bank holding company; and

''(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

''(B) EXCEPTION.—Subparagraph (A) shall not apply to an acquisition that involves an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).''; and

(B) in subsection (k)(6)(B), by striking ''savings association'' and inserting ''insured depository institution''.

(2) DEFINITIONS.—Section 2(o)(4) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(o)(4)) is amended—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C)(ii), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(D) with respect to a State savings association, the State by which the savings association is chartered; and

''(E) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.''.

(c) ACQUISITIONS BY SAVINGS AND LOAN HOLDING COMPANIES.—Section 10(e)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)(2)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (C), by striking ''or'' at the end;

(B) in subparagraph (D), by striking the period at the end and inserting '', or''; and

(C) by adding at the end the following:

''(E) in the case of an application by a savings and loan holding company to acquire an insured depository institution, if—

''(i) the home State of the insured depository institution is a State other than the home State of the savings and loan holding company;

''(ii) the applicant (including all insured depository institutions which are affiliates of the applicant) controls, or upon consummation of the transaction would control, more than 10 percent of the total amount of deposits of insured depository institutions in the United States; and

''(iii) the acquisition does not involve an insured depository institution in default or in danger of default, or with respect to which the Federal Deposit Insurance Corporation provides assistance under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823).''; and

(2) by adding at the end the following:

''(7) DEFINITIONS.—For purposes of paragraph (2)(E)—

''(A) the terms 'default', 'in danger of default', and 'insured depository institution' have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

''(B) the term 'home State' means—

''(i) with respect to a national bank, the State in which the main office of the bank is located;

''(ii) with respect to a State bank or State savings association, the State by which the savings association is chartered;

''(iii) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located; and

''(iv) with respect to a savings and loan holding company, the State in which the amount of total deposits of all insured depository institution subsidiaries of such company was the greatest on the date on which the company became a savings and loan holding company.''.

SA 3960. Mr. SCHUMER (for himself and 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:

On page 1565, after line 23, add the following:

TITLE XIII—REGULATION OF DEBT SETTLEMENT SERVICES

SEC. 1301. AMENDMENT TO CONSUMER CREDIT PROTECTION ACT.

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following:

''TITLE X—DEBT SETTLEMENT SERVICES

''SEC. 1001. DEFINITIONS.

''In this title:

''(1) ATTORNEY GENERAL OF A STATE.—The term 'attorney general of a State' means the attorney general or other chief law enforcement officer of a State.

''(2) COMMISSION.—The term 'Commission' means the Federal Trade Commission.

''(3) CONSUMER.—The term 'consumer' means any person.

''(4) CONSUMER SETTLEMENT ACCOUNT.—The term 'consumer settlement account' means any account or other means or device in which payments, deposits, or other transfers from a consumer are held or transferred to a debt settlement provider for the accumulation of the consumer's funds in anticipation of proffering an adjustment or settlement of a debt or obligation of the consumer to a creditor on behalf of the consumer.

''(5) DEBT SETTLEMENT PROGRAM.—The term 'debt settlement program' means the actions and activities undertaken by a debt settlement provider and a consumer in connection with the provision of debt settlement service.

''(6) DEBT SETTLEMENT PROVIDER.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'debt settlement provider' means any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement services in exchange for a fee or compensation, or any person who solicits for or acts on behalf of any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement services in exchange for any fee or compensation.

''(B) EXCEPTION.—The term 'debt settlement provider' does not include the following:

''(i) An attorney providing a debt settlement service to a consumer who—

''(I) is licensed to practice law and in good standing in the jurisdiction where the consumer resides;

''(II) personally provides such service while acting in the ordinary practice of law;

''(III) puts any advance fee received from the consumer in a client trust account until earned pursuant to the terms of a written agreement that details the work to be performed by the attorney and the fee schedule for the attorney's work;

''(IV) is engaged in the practice of law through the same business entity ordinarily used by the attorney when providing legal services that are not part of a debt settlement service;

''(V) does not share any fee received for the provision of such service with a person who is not an attorney; and

''(VI) does not provide such service through a partnership, corporation, association, referral arrangement, or other entity or arrangement—

''(aa) that is directed or controlled, in whole or in part, by an individual who is not an attorney;

''(bb) in which an individual who is not an attorney holds any interest;

''(cc) in which an individual who is not an attorney is a director or officer thereof or occupies a position of similar responsibility;

''(dd) in which an individual who is not an attorney has the right to direct, control, or regulate the professional judgment of the attorney; or

''(ee) in which an individual who is not an attorney and who is not under the supervision and control of the attorney delivers such service or exercises professional judgment with respect to the provision of such service.

''(ii) Escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting—

''(I) in the ordinary practice of their professions; and

''(II) through the same entity used in the ordinary practice of their profession.

''(iii) Any bank, agent of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, or insurance company operating or organized under the laws of a State or the United States.

''(iv) Mortgage servicers (as such term is defined in section 6(i) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2))) carrying out mortgage loan modifications.

''(v) Any person who performs credit services for such person's employer while receiving a regular salary or wage when the employer is not engaged in the business of offering or providing debt settlement service.

''(vi) An organization that is described in section 501(c)(3) and subject to section 501(q) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code.

''(vii) Public officers while acting in their official capacities and persons acting under court order.

''(viii) Any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise.

''(7) DEBT SETTLEMENT SERVICE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'debt settlement service' means—

''(i) offering to provide advice or service, or to act or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

''(ii) offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing, obtaining, or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt.

''(B) EXCEPTION.—The term 'debt settlement service' does not include services of an attorney in providing information, advice, or legal representation with respect to filing a case or proceeding under title 11, United States Code.

''(8) ENROLLMENT FEE.—The term 'enrollment fee' means any fee, obligation, or compensation paid or to be paid by the consumer to a debt settlement provider in consideration of or in connection with establishing a contract or other agreement with a consumer related to the provision of debt settlement service.

''(9) MAINTENANCE FEE.—The term 'maintenance fee' means any fee, obligation, or compensation paid or to be paid by a consumer on a periodic basis to a debt settlement provider in consideration of maintaining the relationship and services to be provided by a debt settlement provider in accordance with a contract with a consumer related to the provision of debt settlement service.

''(10) PRINCIPAL AMOUNT OF THE DEBT.—The term 'principal amount of the debt' means the total amount or outstanding balance owed by a consumer to one or more creditors for a debt that is included in a contract for debt settlement service at the time when the consumer enters into a contract for debt settlement service pursuant to section 1002(a).

''(11) SETTLEMENT FEE.—The term 'settlement fee' means any fee, obligation, or compensation paid or to be paid by a consumer to a debt settlement provider in consideration of or in connection with an agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor's claim against the consumer.

''SEC. 1002. REQUIRED ACTS.

''(a) CONTRACT REQUIRED.—

''(1) IN GENERAL.—A debt settlement provider may not provide a debt settlement service to a consumer or receive any fee from a consumer for a debt settlement service without a written contract described in paragraph (2) that is signed by the consumer.

''(2) CONTRACT CONTENTS.—A contract described in this paragraph is a contract between a debt settlement provider and a consumer for debt settlement services that includes the following:

''(A) The name and address of the consumer.

''(B) The date of execution of the contract.

''(C) The legal name of the debt settlement provider, including any other business names used by the debt settlement provider.

''(D) The corporate address and regular business address, including a street address, of the debt settlement provider.

''(E) The license or registration number under which the debt settlement provider is licensed or registered if the consumer resides in a State that requires a debt settlement provider to obtain a license or registration as a condition of providing debt settlement service in that State.

''(F) The telephone number at which the consumer may speak with a representative of the debt settlement provider during normal business hours.

''(G) A complete list of the consumer's accounts, debts, and obligations covered under the debt settlement service covered by the contract, including the name of each creditor and principal amount of each debt.

''(H) A description of the services to be provided by the debt settlement provider, including the expected timeframe for settlement for each account, debt, or obligation included in subparagraph (G).

''(I) A clear and conspicuous itemized list of all fees, including any enrollment fee and settlement fees to be paid by the consumer to the debt settlement provider, and the date, approximate date, or circumstances under which each fee will become due.

''(J) A clear and conspicuous statement of a good faith estimate of the total amount of all fees to be collected by the debt settlement provider from the consumer for the provision of debt settlement service under the contract.

''(K) A clear and conspicuous statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, the time period over which the savings goals extend, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.

''(L) A notice to the consumer that unless the consumer is insolvent, if a creditor settles a debt for an amount less than the consumer's current outstanding balance at the time of settlement, the consumer may incur a tax liability.

''(M) A written notice to the consumer, which includes a form that the consumer may use and the address to which the form may be returned to the debt settlement provider, that the consumer may cancel the contract pursuant to the provisions of section 1006.

''(N) A written notice to the consumer of the cancellation and refund rights set forth in section 1006, including notice of any related rules promulgated by the Commission under section 1010.

''(b) NOTIFICATION REQUIRED.—A debt settlement provider shall, before the earlier of the date of entering into a written contract with a consumer for debt settlement services or rendering debt settlement services to a consumer, provide to the consumer in writing the following:

''(1) An individualized financial analysis of the consumer, including an assessment of the consumer's income, expenses, and debts.

''(2) A description of the debt settlement service being offered to the consumer by the debt settlement provider, including the following:

''(A) A description of the debt settlement program being offered as part of the service.

''(B) A list of each of the consumer's debts, creditors, and debt collectors that will be covered under the program.

''(3) A statement containing the following:

''(A) A good-faith estimate of the length of time it will take to achieve settlement of each debt covered under the program.

''(B) The specific time by which the debt settlement service provider will make a bona fide settlement offer to each creditor and debt collector covered under the program.

''(C) The total amount of debt owed by the consumer to each creditor covered under the program.

''(D) An estimate of the total and the monthly savings the consumer will be required to accumulate to complete the program.

''(4) A clear and conspicuous statement that—

''(A) the consumer remains legally obligated to make periodic or scheduled payments to creditors while participating in a debt settlement program; and

''(B) the debt settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.

''(5) A clear and conspicuous notice to the consumer that—

''(A) the utilization of debt settlement service may not be suitable for all consumers;

''(B) the utilization of debt settlement service may adversely impact the consumer's credit history and credit score;

''(C) the consumer may inquire about other means of dealing with indebtedness, including nonprofit credit counseling and bankruptcy;

''(D) the failure to make periodic or scheduled payments to a creditor—

''(i) is likely to affect adversely the consumer's creditworthiness;

''(ii) may result in continued collection activity by creditors or debt collectors;

''(iii) may result in the consumer being sued by one or more creditors or debt collectors, and in the garnishment of the consumer's wages; and

''(iv) may increase the amount of money the consumer owes to one or more creditors or debt collectors due to the imposition by the creditor of interest charges, late fees, and other penalty fees; and

''(E) any savings the consumer realizes from use of a debt settlement service may be taxable income.

''(c) DETERMINATION OF BENEFIT TO CONSUMERS REQUIRED.—A debt settlement provider may not enter into a written contract with a consumer unless the debt settlement provider makes written determinations, supported by the financial analysis, that—

''(1) the consumer can reasonably meet the requirements of the proposed debt settlement program included in the debt settlement service offered to the consumer, including the fees and the periodic savings amounts set forth in the savings goals under the program;

''(2) there is a net tangible financial benefit to the consumer of entering into the proposed debt settlement program; and

''(3) the debt settlement program is suitable for the consumer at the time the contract is to be signed.

''(d) CHOICE OF LANGUAGE.—If a debt settlement provider communicates with a consumer primarily in a language other than English, the debt settlement provider shall furnish to the consumer a translation of the disclosures and documents required by this title in that other language.

''(e) MONTHLY STATEMENTS REQUIRED.—A debt settlement provider shall, not less frequently than monthly, provide each consumer with which it has a contract for the provision of debt settlement service a statement of account balances, fees paid, settlements completed, remaining debts, and any other term considered appropriate by the Commission.

''SEC. 1003. PROHIBITED ACTS.

''(a) LOANS.—A debt settlement provider may not make loans or offer credit or solicit or accept any note, mortgage, or negotiable instrument other than a check signed by the consumer and dated no later than the date of signature.

''(b) CONFESSION OF JUDGMENT.—A debt settlement provider may not take any confession of judgment or power of attorney to confess judgment against the consumer or appear as the consumer or on behalf of the consumer in any judicial or non-judicial proceedings.

''(c) RELEASE OR WAIVER OF OBLIGATION.—A debt settlement provider may not take any release or waiver of any obligation to be performed on the part of the debt settlement provider or any right of the consumer.

''(d) RECEIPT OF THIRD-PARTY COMPENSATION.—A debt settlement provider may not receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the consumer explicitly for the provision of debt settlement service to that consumer, without prior disclosure of such to the consumer.

''(e) CONFIDENTIALITY.—In the absence of a subpoena issued to compel disclosure, a debt settlement provider may not (without prior written consent of the consumer) disclose to anyone the name or any personal information of a consumer for whom the debt settlement provider has provided or is providing debt settlement service other than to a consumer's own creditors or the debt settlement provider's agents, affiliates, or contractors for the purpose of providing debt or settlement service.

''(f) MISREPRESENTATION, OMISSION, AND FALSE PROMISES.—A debt settlement provider may not misrepresent, directly or by implication, any material fact, make a material omission, or make a false promise directed to one or more consumers in connection with the solicitation, offering, contracting or provision of debt settlement service, including the following:

''(1) The total costs to purchase, receive, or use the services, or the nature of the services to be provided.

''(2) Any material restriction, limitation, or condition to receive the offered debt settlement service.

''(3) Any material aspect of the performance, efficacy, nature, or central characteristics of the offered debt settlement service.

''(4) Any material aspect of the nature of terms of the seller's cancellation policies.

''(5) Any claim of affiliation with, or endorsement or sponsorship by, any person or government entity.

''(6) Any material aspect of any debt settlement service, including the following:

''(A) The amount of time necessary to achieve settlement of all debt.

''(B) The amount of money or the percentage of the debt amount that the consumer must accumulate before the provider will initiate attempts with the consumer's creditors or debt collectors to settle the debt.

''(C) The effect of the service on a consumer's creditworthiness.

''(D) Whether the provider is a nonprofit or a for-profit entity.

''(g) PURCHASING OF DEBTS.—A debt settlement provider may not purchase debts or engage in the practice or business of debt collection.

''(h) SECURED DEBT.—A debt settlement provider may not include in a debt settlement agreement any secured debt.

''(i) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A debt settlement provider may not employ any unfair, or deceptive act or practice, including the omission of any material information.

''(j) LIMITATION ON COMMUNICATION.—A debt settlement provider may not—

''(1) obtain a power of attorney or other authorization from a consumer that prohibits or limits the consumer or any creditor from communication directly with one another; or

''(2) represent, expressly or by implication, that a consumer cannot or should not contact or communicate with any creditor.

''SEC. 1004. FEES.

''(a) TYPES OF FEES PERMITTED.—The types of fees that a debt settlement provider may charge a consumer are the following:

''(1) Enrollment fees.

''(2) Settlement fees.

''(b) TYPES OF FEES PROHIBITED.—All fee types not included under subsection (a) are prohibited, including maintenance fees.

''(c) ENROLLMENT FEE AMOUNTS.—The amount of an enrollment fee charged by a debt settlement provider shall not exceed the lesser of—

''(1) the amount that is reasonable and commensurate to the debt settlement service provided to a consumer; and

''(2) $50.

''(d) DEBT SETTLEMENT FEE AMOUNTS.—The amount of a settlement fee charged by a debt settlement provider shall not exceed the lesser of—

''(1) the amount that is reasonable and commensurate to the debt settlement service provided to a consumer; and

''(2) the amount that is 10 percent of the difference between—

''(A) the principal amount of that debt; and

''(B) the amount—

''(i) paid by the debt settlement provider to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt; or

''(ii) negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt.

''(e) TIMING OF DEBT SETTLEMENT FEES.—A debt settlement provider shall not collect any debt settlement fee from a consumer until—

''(1) a creditor enters into a legally enforceable written agreement with the consumer, in a form prescribed by the Commission, to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt; and

''(2) those funds are provided—

''(A) by the debt settlement provider on behalf of the consumer; or

''(B) directly by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider.

''SEC. 1005. CONSUMER SETTLEMENT ACCOUNTS.

''(a) TRUST ACCOUNT REQUIRED.—A debt settlement provider who receives funds from a consumer shall hold all funds received for a consumer settlement account in a properly designated trust account in a federally insured depository institution. Such funds shall remain the property of the consumer until the debt settlement provider disburses the funds to a creditor on behalf of the consumer as full or partial satisfaction of the consumer's debt to the creditor or the creditor's claim against the consumer.

''(b) INDEPENDENT ADMINISTRATION OF ACCOUNT.—A debt settlement provider may not hold funds received for a consumer settlement account under subsection (a) in an account administered by an entity that—

''(1) is owned by, controlled by, or in any way affiliated with the debt settlement service provider; or

''(2) gives or accepts any money or other compensation in exchange for referrals of business involving the debt settlement service provider.

''(c) LIMITATIONS.—A debt settlement service provider shall not—

''(1) be named on a consumer's bank account;

''(2) take a power of attorney in a consumer's bank account;

''(3) create a demand draft on a consumer's bank account;

''(4) exercise any control over any bank account held by or on behalf of the consumer; or

''(5) obtain any information about a consumer's bank account from any person other than the consumer, except information obtained with the consumer's permission from the consumer's settlement account as necessary to comply with the requirements of section 1002(e).

''SEC. 1006. CANCELLATION OF CONTRACT.

''(a) IN GENERAL.—A consumer may cancel a contract with a debt settlement provider at any time.

''(b) REFUNDS.—

''(1) CANCELLATION WITHIN 90 DAYS OR UPON VIOLATION OF THIS TITLE.—If a consumer cancels a contract with a debt settlement provider not later than 90 days after the date of the execution of the contract or at any time upon a violation of a provision of this title by the debt settlement provider, the debt settlement provider shall refund to the consumer all—

''(A) fees paid to the debt settlement provider by the consumer, with the exception of any earned settlement fee; and

''(B) funds paid by the consumer to the debt settlement provider that—

''(i) have accumulated in a consumer settlement account; and

''(ii) the debt settlement provider has not disbursed to creditors.

''(2) CANCELLATIONS AFTER 90 DAYS.—If a consumer cancels a contract with a debt settlement provider later than 90 days after the date of the execution of the contract and for any reason other than for a violation of a provision of this title by the debt settlement provider, the debt settlement provider shall refund to the consumer—

''(A) half of all of the fees collected from the consumer, with the exception of any earned settlement fees; and

''(B) all funds paid by the consumer to the debt settlement provider that have accumulated in a consumer settlement account and which the debt service provider has not disbursed to creditors.

''(3) TIMING OF REFUNDS.—A debt settlement provider shall make any refund required under this subsection not later than 5 business days after a notice of cancellation is made on behalf of the consumer under subsection (d).

''(4) STATEMENT OF ACCOUNT.—A debt settlement provider making a refund to a consumer under this subsection shall include with such refund a full statement of account showing the following:

''(A) The fees received by the debt settlement provider from the consumer.

''(B) The fees refunded to the consumer by the debt settlement provider.

''(C) The savings of the consumer held by the debt settlement provider.

''(D) The payments made by the debt settlement provider to creditors on behalf of the consumer.

''(E) The settlement fees earned, if any, by the debt settlement provider by settling debt on behalf of the consumer.

''(F) The savings of the consumer refunded to the consumer by the debt settlement provider.

''(c) REVOCATION OF POWERS OF ATTORNEY AND DIRECT DEBIT AUTHORIZATIONS.—Upon cancellation of a contract by a consumer—

''(1) all powers of attorney and direct debit authorizations granted to the debt settlement provider by the consumer are revoked and voided; and

''(2) the debt settlement provider shall immediately take any action necessary to reflect cancellation of the contract, including notifying the recipient of any direct debit authorization.

''(d) NOTICE OF CANCELLATION TO CREDITORS.—Upon the cancellation of a contract under this section of the Act, the debt settlement provider shall provide timely notice of the cancellation of such contract to each of the creditors with whom the debt settlement provider has had any prior communication on behalf of the consumer in connection with the provision of any debt settlement service.

"SEC. 1007. OBLIGATION OF GOOD FAITH.

''A debt settlement provider shall act in good faith in all matters under this title.

"SEC. 1008. INVALIDATION OF CONTRACTS.

''(a) CONSUMER WAIVERS INVALID.—A waiver by a consumer of any protection provided or any right of the consumer under this title—

''(1) is void; and

''(2) may not be enforced by any other person.

''(b) ATTEMPT TO OBTAIN WAIVER.—Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right or protection of the consumer or any obligation or requirement of the debt settlement provider under this title shall be considered a violation of a provision of this title.

''(c) CONTRACTS NOT IN COMPLIANCE.—Any contract for a debt settlement service that does not comply with the provisions of this title—

''(1) shall be treated as void;

''(2) may not be enforced by any other person; and

''(3) upon notice of a void contract, a refund by the debt settlement provider to the consumer shall be made as if the contract had been cancelled as provided in section 1006(b)(1) of this title.

"SEC. 1009. ADVERTISING, MARKETING, AND COMMUNICATION PRACTICES.

''A debt settlement provider shall not state or imply claims, results, or outcomes in any advertising, marketing, or other communication with consumers that represent or reflect results or outcomes, including about the percentage or dollar amount by which debt may be reduced or the amount a consumer may save or the historical experience of its customers with respect to debt reduction, that—

''(1) are materially different from the actual average result or outcome achieved by that debt settlement provider on all of the debt of consumers who enter the program; or

''(2) are not verified by an independent audit that documents that the described result or outcome was achieved for all debt enrolled in the program by at least 80 percent of the customers who began the service in the most recent 2 calendar year period.

"SEC. 1010. RULEMAKING BY FEDERAL TRADE COMMISSION.

''(a) IN GENERAL.—Notwithstanding title X of the Restoring American Financial Stability Act of 2010, the Commission may prescribe rules with respect to advertising and marketing practices, record retention, provision of accountings to consumers, and such other matters as the Commission considers necessary to improve the consumer experience with debt settlement providers.

''(b) DEBT RELIEF SERVICE RULES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Commission may prescribe rules with respect to the providers of debt relief service not otherwise covered by this title.

''(2) EXCEPTION.—Any rule prescribed under paragraph (1) shall not be applicable to or otherwise include services provided by those persons or entities identified in section 1001(6)(B) or section 1001(7)(B).

''(3) DEBT RELIEF SERVICE DEFINED.—In this subsection, the term 'debt relief service' means any service represented, directly or by implication, to renegotiate, or in any way alter the terms of payment or other terms of the debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector.

''(c) PROCEDURE.—All rulemaking under this title shall be conducted in accordance with section 553 of title 5, United States Code, and shall not be subject to other procedures set forth in section 18 of the Federal Trade Commission Act (15 U.S.C. 57a).

"SEC. 1011. CIVIL LIABILITY.

''(a) LIABILITY ESTABLISHED.—Any debt settlement provider who fails to comply with any provision of this title with respect to any consumer shall be liable to such consumer in an amount equal to the sum of the amounts determined under each of the following:

''(1) ACTUAL DAMAGES.—The greater of—

''(A) the amount of any actual damage sustained by such consumer as a result of such failure; or

''(B) any amount paid by the consumer to the debt settlement provider.

''(2) STATUTORY DAMAGES.—An amount determined by the court of not less than $1,000 nor more than $5,000 per violation.

''(3) PUNITIVE DAMAGES.—

''(A) INDIVIDUAL ACTIONS.—In the case of any action by an individual, such additional amount as the court may allow.

''(B) CLASS ACTIONS.—In the case of a class action, the sum of—

''(i) the aggregate of the amount which the court may allow for each named plaintiff; and

''(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

''(4) ATTORNEYS' FEES.—In the case of any successful action to enforce any liability under paragraph (1), (2), or (3), the costs of the action, together with reasonable attorneys' fees.

''(b) FACTORS TO BE CONSIDERED IN AWARDING PUNITIVE DAMAGES.—In determining the amount of any liability of any debt settlement provider under subsection (a)(2), the court shall consider, among other relevant factors—

''(1) the frequency and persistence of noncompliance by the debt settlement provider;

''(2) the nature of the noncompliance;

''(3) the extent to which such noncompliance was intentional; and

''(4) in the case of any class action, the number of consumers adversely affected.

"SEC. 1012. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

''(a) IN GENERAL.—Notwithstanding title X of the Restoring American Financial Stability Act of 2010, the Commission shall enforce the provisions of this title 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 Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made part of this title.

''(b) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A failure to comply with a provision of this title or a violation of a rule prescribed under section 1010 shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

"SEC. 1013. ACTION BY STATES.

''(a) IN GENERAL.—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 provision of this title or a rule prescribed under section 1010 in a practice that violates such provision or rule, the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States or other court of competent jurisdiction—

''(1) to enjoin that practice;

''(2) to enforce compliance with the provision or rule; or

''(3) to obtain damages under section 1011 on behalf of residents of the State.

''(b) ATTORNEYS' FEES.—In the case of any successful action under paragraph (1), (2), or (3) of subsection (a), the attorney general of the State bringing the action shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(c) RIGHTS OF FEDERAL TRADE COMMISSION.—

''(1) NOTICE TO FEDERAL TRADE COMMISSION.—

''(A) IN GENERAL.—Except as provided in subparagraph (C), the attorney general of a State shall notify the Federal Trade Commission in writing of any civil action under subsection (a), prior to initiating such civil action.

''(B) CONTENTS.—The notice required by subparagraph (A) shall include a copy of the complaint to be filed to initiate such civil action.

''(C) EXCEPTION.—If it is not feasible for the attorney general of a State to provide the notice required by subparagraph (A), the State shall provide notice immediately upon instituting a civil action under subsection (a).

''(2) INTERVENTION BY FEDERAL TRADE COMMISSION.—Upon receiving notice required by paragraph (1) with respect to a civil action, the Commission may—

''(A) intervene in such action; and

''(B) upon intervening—

''(i) be heard on all matters arising in such civil action;

''(ii) remove the action to the appropriate district court of the United States; and

''(iii) file petitions for appeal of a decision in such action.

''(d) INVESTIGATORY POWERS.—Nothing in this section may be construed to prevent the attorney general of a State from exercising the powers conferred on such attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(e) EFFECT OF ACTION BY FEDERAL TRADE COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action to enforce a violation of a provision of this title or a rule prescribed under section 1010, no State may, during the pendency of such action, bring a civil action under subsection (a) against any defendant named in the complaint of the Commission for violation of a provision of this title or rule prescribed under section 1010 that is alleged in such complaint.

''(f) ACTIONS BY OTHER STATE OFFICIALS.—

''(1) IN GENERAL.—In addition to actions brought by an attorney general of a State under subsection (a), an action may be brought by officials in a State who are so authorized.

''(2) SAVINGS PROVISION.—Nothing contained in this section may be construed to prohibit an authorized official of a State from proceeding in a court of such State on the basis of an alleged violation of any civil or criminal statute of such State.

"SEC. 1014. STATUTE OF LIMITATIONS.

''Any action to enforce any liability under section 1011 may be brought before the later of—

''(1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or

''(2) in any case in which any debt settlement provider has materially and willfully misrepresented any information that the debt settlement provider is required, by any provision of this title, to disclose to any consumer and that is material to the establishment of the debt settlement provider's liability to the consumer under this title, the end of the 5-year period beginning on the date of the discovery by the consumer of the violation.

''SEC. 1015. RELATION TO STATE LAW.

''This title shall not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the law of any State except to the extent that such law is inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this title if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this title and any subsequent amendments. Nothing in this title shall limit or prohibit a State from prohibiting or otherwise restricting the provision of debt settlement services, or imposing and administering a system of additional requirements, prohibitions, registration, or licensure.''.

SEC. 1302. INITIAL REGULATIONS.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Federal Trade Commission shall commence a rulemaking to prescribe the following:

(1) The form of the written notices required under subparagraphs (M) and (N) of subsection (a)(2) and subsection (b)(5) of section 1002 of the Consumer Credit Protection Act, as added by section 1301 of this title.

(2) The form of the statement required under subsection (e) of such section 1002.

(3) The form for an agreement described in section 1004(e)(1) of such Act.

(b) DEADLINE.—The Federal Trade Commission shall complete the rulemaking required by subsection (a) not later than 1 year after the date of the enactment of this Act.

(c) PROCEDURE.—All rulemaking under subsection (a) shall be conducted in accordance with section 553 of title 5, United States Code, and shall not be subject to other procedures set forth in section 18 of the Federal Trade Commission Act (15 U.S.C. 57a).

SEC. 1303. EFFECTIVE DATE.

Title X of the Consumer Credit Protection Act, as added by section 1301 of this title, shall take effect on the date that is 60 days after the date of the enactment of this Act.

SA 3961. Mr. BROWNBACK 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 ''to 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 1258, line 7, insert '', as such amount is indexed for inflation,'' before ''and''.

On page 1258, line 10, insert '', as such amount is indexed for inflation,'' before ''and''.

On page 1267, line 18, insert before the semicolon '', as such amount is indexed for inflation''.

On page 1267, line 20, insert before the period '', as such amount is indexed for inflation''.

On page 1267, strike line 21 and all that follows through page 1270, line 21, and insert the following:

(b) ENFORCEMENT.—Notwithstanding any other provision of this title, the prudential regulator of a person described in subsection (a) shall have exclusive authority to enforce compliance with respect to such person.

(c) RULEMAKING AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of this title, the prudential regulators may exercise concurrent authority with the Bureau to promulgate regulations under the federal consumer laws with respect to a person described in subsection (a).

(2) PREEMPTION.—A regulation promulgated by the prudential regulators under the enumerated consumer laws shall occupy the field and preempt any regulation promulgated by the Bureau.

(d) CLARIFICATION OF EXISTING AUTHORITY OF PRUDENTIAL REGULATORS.—No provision of this title may be construed as altering, amending, or affecting the authority of the prudential regulators to exercise supervisory or enforcement authority, order assessments, or initiate enforcement proceedings with respect to a person described in subsection (a).

SA 3962. Mr. MERKLEY (for himself, Ms. KLOBUCHAR, Mr. SCHUMER, Ms. SNOWE, Mr. BROWN of Massachusetts, Mr. BEGICH, Mrs. BOXER, Mr. DODD, Mr. KERRY, Mr. FRANKEN, and Mr. LEVIN) 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 1430, between lines 7 and 8, insert the following:

SEC. 1074. PROHIBITED PAYMENTS TO MORTGAGE ORIGINATORS.

Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by inserting after subsection (j) the following:

''(k) PROHIBITION ON STEERING INCENTIVES.—

''(1) IN GENERAL.—For any consumer credit transaction secured by real property or a dwelling, no loan originator shall receive from any person and no person shall pay to a loan originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

''(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

''(A) IN GENERAL.—For any consumer credit transaction secured by real property or a dwelling, a loan originator may not arrange for a consumer to finance through the rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or loan originator.

''(B) EXCEPTION.—Notwithstanding subparagraph (A), a loan originator may arrange for a consumer to finance through the rate an origination fee or cost if—

''(i) the loan originator does not receive any other compensation, directly or indirectly, from the consumer except the compensation that is financed through the rate;

''(ii) no person who knows or has reason to know of the consumer-paid compensation to the loan originator, other than the consumer, pays any compensation to the loan originator, directly or indirectly, in connection with the transaction; and

''(iii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party settlement charges).

''(3) RULES OF CONSTRUCTION.—No provision of this subsection shall be construed as—

''(A) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

''(B) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the loan originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

''(C) prohibiting incentive payments to a loan originator based on the number of loans originated within a specified period of time.

''(4) LOAN ORIGINATOR.—For the purposes of this section, the term 'loan originator'—

''(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain, with respect to credit to be secured by real property or a dwelling—

''(i) arranges for an extension, renewal, or continuation of such credit;

''(ii) takes an application for credit or assists a consumer in applying for such credit; or

''(iii) offers or negotiates terms of such credit;

''(B) does not include any person who is not otherwise described in subparagraph (A) and who performs purely administrative or clerical tasks on behalf of a person who is described in subparagraph (A); and

''(C) does not include a person that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person is compensated by a lender or other loan originator or by any agent of such lender or other loan originator.''.

SEC. 1075. MINIMUM STANDARDS FOR RESIDENTIAL MORTGAGE LOANS.

(a) IN GENERAL.—No rule, order, or guidance issued by the Bureau under this title shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution.

(b) ABILITY TO REPAY.—

(1) TILA AMENDMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639), as amended by section 1074 of this Act, is further amended by inserting after subsection (k) the following:

''(l) ABILITY TO REPAY.—

''(1) IN GENERAL.—No creditor may make a loan secured by real property or a dwelling unless the creditor, based on verified and documented information, determines that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments.

''(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more loans secured by the same real property or dwelling will be made to the same consumer, the creditor shall, based on verified and documented information, determine that the consumer has a reasonable ability to repay the combined payments of all loans on the same real property or dwelling according to the terms of those loans and all applicable taxes, insurance, and assessments.

''(3) BASIS FOR DETERMINATION.—A determination under this subsection of a consumer's ability to repay a loan described in paragraph (1) shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.

''(4) INCOME VERIFICATION.—A creditor shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

''(A) Internal Revenue Service transcripts of tax returns; or

''(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

''(5) PRESUMPTION OF ABILITY TO REPAY.—Any creditor with respect to any consumer loan secured by real property or a dwelling is presumed to have complied with this subsection with respect to such loan if the creditor—

''(A) verifies the consumer's ability to repay as provided in paragraphs (1), (2), (3), and (4); and

''(B) determines the consumer's ability to repay using the maximum rate permitted under the loan during the first 5 years following consummation and a payment schedule that fully amortizes the loan and taking into account current obligations and all applicable taxes, insurance, and assessments.

''(6) EXCEPTIONS TO PRESUMPTION.—Notwithstanding paragraph (5), no presumption of compliance shall be applied to a loan—

''(A) for which the regular periodic payments for the loan may—

''(i) result in an increase of the principal balance; or

''(ii) allow the consumer to defer repayment of principal.

''(B) the terms of which 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; or

''(C) for which the total points and fees payable in connection with the loan exceed 3 percent of the total loan amount, where '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)), except that, for the purposes of computing the total points and fees under this subparagraph, the total points and fees attributable to any premium for mortgage guarantee insurance provided by an agency of the Federal Government or an agency of a State shall exclude any amount of the points and fees for such insurance greater than 1 percent of the total loan amount.

''(7) EXEMPTION.—

''(A) The Board may revise, add to, or subtract from the criteria under paragraphs (5) and (6) and subparagraphs (B) and (C) of this paragraph upon a finding that such regulations are necessary or appropriate to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with this subsection.

''(B) BRIDGE LOANS.—This subsection does not apply to a temporary or 'bridge' loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a current dwelling within 12 months.

''(C) REVERSE MORTGAGES.—This subsection does not apply with respect to any reverse mortgage.

''(8) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for an extension of credit secured by residential real estate or a dwelling, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.''.

(2) CONFORMING AMENDMENT.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639), as amended by this Act, is amended—

(A) by redesignating subsections (k), (l), and (m) as subsections (m), (n), and (o), respectively; and

(B) in subsection (o), as so redesignated, by striking ''(l)(2)'' and inserting ''(n)(2)''.

On page 1430, line 8, ''**SEC. 1074**'' and insert ''**SEC. 1076**''.

On page 1441, line 1, ''**SEC. 1075**'' and insert ''**SEC. 1077**''.

On page 1442, line 10, ''**SEC. 1076**'' and insert ''**SEC. 1078**''.

SA 3963. 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 387, line 15, strike ''by rule'' and all that follows through page 387, line 3 and insert the following: ''by rule, adjust the financial threshold for an accredited investor, as set forth in the rules of the Commission under the Securities Act of 1933, not less frequently than once every 5 years, to reflect the percentage increase in the cost of living following the date of enactment of this Act.''.

SA 3964. Mr. HARKIN (for himself and Ms. CANTWELL) 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 557, strike lines 4 through 14 and insert the following:

'swap execution facility' means an electronic trading system with pre-trade and post-trade transparency in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the system, but which is not a designated contract market.''; and

Beginning on page 773, strike line 24 and all that follows through page 774, line 7, and insert the following:

'swap execution facility' means an electronic trading system with pre-trade and post-trade transparency in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by other participants that are open to multiple participants in the system, but which is not a designated contract market.

SA 3965. Mr. HARKIN 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 691, strike lines 10 through 12 and insert the following:

CONTRACT MARKETS.—The governing body of the board of trade shall be constituted to facilitate, consistent with other applicable core principles and duties, consideration of the views and objectives of market participants.

SA 3966. Mr. GRASSLEY 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. ___. REVOLVING DOOR PROHIBITIONS FOR FINANCIAL REGULATORS.

(a) IN GENERAL.—Section 207(c)(2)(A) of title 18, United States Code, is amended—

(1) in clause (iv), by striking ''or'' at the end;

(2) in clause (v), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(vi) employed by the Securities and Exchange Commission as an officer, attorney, economist, examiner, or other employee described in section 4802(b) of title 5 and who receives increased pay or additional benefits or compensation under subsection (c) or (d) of that section; or

''(vii)(I) employed by—

''(aa) the Federal Reserve System as an employee described in section 11(l) of the Federal Reserve Act (12 U.S.C. 248(l));

''(bb) the Farm Credit Administration as an employee described in section 5.11(c)(2) of the Farm Credit Act of 1971 (12 U.S.C. 2245(c)(2));

''(cc) the Federal Deposit Insurance Corporation as an employee described in section

9(a) of the Federal Deposit Insurance Act (12 U.S.C. 1819(a));

''(dd) the National Credit Union Administration as an employee described in section 120 of the Federal Credit Union Act (12 U.S.C. 1766);

''(ee) the Office of the Comptroller of Currency as an employee described in section 5240 of the Revised Statutes (12 U.S.C. 482) or section 206 of the Bank Conservation Act (12 U.S.C. 206);

''(ff) the Office of Federal Housing Enterprise Oversight as an employee described in section 1315 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4515);

''(gg) the Office of Thrift Supervision as an employee described in section 3(h) of the Home Owners' Loan Act (12 U.S.C. 1462a(h)); or

''(hh) the Commodities Futures Trading Commission as an employee described in section 2(a)(7) of the Commodity Exchange Act (7 U.S.C. 2(a)(7)); and

''(II) who receives increased pay or additional benefits or compensation in excess of any pay limitation under title 5, as authorized by the board, commission, or agency.''.

(b) REVOLVING DOOR REGISTRATION.—

(1) DEFINITIONS.—In this subsection—

(A) the term ''covered employee'' means a former employee of a covered financial regulator who—

(i) received increased pay or additional benefits or compensation in excess of any pay limitation under title 5, United States Code, as authorized by the covered financial regulator on or after the date of enactment of this Act; and

(ii) represents any individual, corporation, or other entity with business before the covered financial regulator that employed the employee; and

(B) the term ''covered financial regulator'' means—

(i) the Commission

(ii) the Federal Reserve System;

(iii) the Farm Credit Administration;

(iv) the Corporation;

(v) the National Credit Union Administration;

(vi) the Office of the Comptroller of Currency;

(vii) the Office of Federal Housing Enterprise Oversight;

(viii) the Office of Thrift Supervision; and

(ix) the Commodities Futures Trading Commission.

(2) REGISTRATION.—

(A) IN GENERAL.—Not later than 120 days after the date of enactment of this Act, each covered financial regulator shall establish a website through which a covered employee may register and update information in accordance with subparagraph (B)

(B) REGISTRATION BY COVERED EMPLOYEES.—A covered employee—

(i) shall register with the covered financial regulator that employed the covered employee before representing any individual, corporation, or other entity with business before the covered financial regulator, which shall include providing—

(I) the name of the covered employee and the last job title held by the covered employee at the covered financial regulator;

(II) the name of the individual, corporation, or other entity;

(III) a description of the purpose of the representation of the individual, corporation, or other entity;

(IV) a comprehensive list of all matters that the representation of the individual, corporation, or other entity will include;

(V) a comprehensive list of all matters in which the covered employee personally and substantially participated while employed by the covered financial regulator; and

(VI) a description of any restriction on the representation of the individual, corporation, or other entity under Federal law, rule, regulation, or order of the covered financial regulator;

(ii) shall, if any information provided under clause (i) changes, provide updated information to the covered financial regulator; and

(iii) may not, during the 2-year period beginning on the date on which the employment of the covered employee with the covered financial regulator terminates, influence any communication to, or appearance before any officer or employee of the covered financial regulator in connection with any matter on which an individual, corporation, or other entity represented by the covered employee seeks official action by any officer or employee of the covered financial regulator.

(3) ENFORCEMENT.—A covered financial regulator may impose a civil monetary penalty on any person that violates paragraph (2)(B) in an amount not less than $10,000 and not more than $100,000 for each violation.

(4) PUBLIC AVAILABILITY.—Not later than 14 days after the date on which information is provided to a covered financial regulator under paragraph (2)(B), the covered financial regulator shall make the information publicly available on the website of the covered financial regulator in a searchable form.

SA 3967. Mr. BINGAMAN 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 100, line 23, strike ''and'' and all that follows through ''(G) any'' on line 24 and insert the following:

(G) potential obligations to third parties in connection with credit derivative transactions between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the third parties that reference the company or obligations of the company; and

(H) any

SA 3968. Mr. TESTER (for himself, Mrs. MURRAY, and Mr. BAUCUS) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1235, strike lines 6 through 10 and insert the following:

(A) the Bureau shall consider—

(i) 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; and

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas;

SA 3969. Mr. LEVIN (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 370, between lines 13 and 14, insert the following:

SEC. 333. FDIC EXAMINATION AUTHORITY.

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by striking ''Board of Directors determines, upon a vote of its members,'' and inserting ''Board of Directors, upon a vote of its members, or the Chairperson determines'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation under this Act, title II of the Restoring American Financial Stability Act of 2010, or otherwise applicable Federal law—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

On page 1006, strike line 17 and all that follows through page 1007, line 2, and insert the following:

(A) by striking paragraph (2) and inserting the following:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation in fact and analysis. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.''; and

On page 1019, line 14, strike ''with respect to'' and all that follows through ''organization'' on line 18 and insert ''to ensure that the qualitative and quantitative data and models used by nationally recognized statistical rating organizations produce credit ratings that have a reasonable foundation in fact and analysis. The rules prescribed under this subsection shall require each nationally recognized statistical rating organization''.

On page 1020, line 25, strike ''and''.

On page 1021, line 15, strike the period at the end and insert the following: ''; and

''(4) to assign relatively greater credit risk to a financial product or transaction for which—

''(A) the rating organization lacks adequate historical performance data;

''(B) the assets are provided by persons with a history of providing poorly performing assets;

''(C) income from the assets will not be directly contributed to the securitization, product, or transaction;

''(D) publicly available information, including trading information, indicates that a prior rating misjudged the credit risk of the product or transaction;

''(E) the product or transaction is of sufficient complexity or novelty that the performance of the product or transaction cannot be reliably evaluated; or

''(F) there is any other feature that the Commission may specify.

On page 1023, line 5, strike ''(A)'' and insert the following:

''(A) BASIC INFORMATION.—Each nationally recognized statistical rating organization shall disclose at the beginning of the form developed under paragraph (1) basic information about each of the credit ratings that is the subject of the disclosure, including—

''(i) the latest rating provided for the product or transaction that is the subject of the disclosure;

''(ii) the date upon which the rating described in clause (i) was issued;

''(iii) whether that rating described in clause (i) was intended to be effective for less or more than 1 year after the date of issuance of the rating;

''(iv) the type of asset to which the rating described in clause (i) applies;

''(v) the history and date of any prior rating with respect to the product or transaction during the 5-year period preceding the date of the disclosure; and

''(vi) any other basic information, as the Commission may require.

''(B)

On page 1025, line 19, strike ''(B)'' and insert ''(C)''.

On page 1028 between lines 4 and 5 insert the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.

On page 1042, strike line 15 and all that follows through page 1043, line 9, and insert the following:

SEC. 939B. ELIMINATING CONFLICTS OF INTEREST THROUGH INTERMEDIATION.

(a) INTERMEDIATION PROPOSAL.—Not later than 180 days after the date of enactment of this Act, the Commission, through the Office of Credit Ratings, shall issue a notice of proposed rulemaking—

(1) to establish a system that—

(A) allows an intermediary to handle the fees provided by issuers to obtain credit ratings from nationally recognized statistical rating organizations, in order to avoid conflicts of interest that arise when an issuer pays for a credit rating with respect to a financial product or transaction that the issuer plans to sell or execute; and

(B) enables such intermediary to receive fees from issuers, direct fees to nationally recognized statistical rating organizations, and create incentives to reward accurate ratings; and

(2) that directs or facilitates the formation of, or identifies, an intermediary to carry out the system described in paragraph (1).

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. STRENGTHENING THE ENFORCEMENT AUTHORITY OF THE COMMISSION OVER NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) REQUIREMENT TO FILE APPLICATIONS AND REPORTS WITH COMMISSION.—Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking ''furnish to'' and inserting ''file with''; and

(B) in paragraph (2), by striking ''furnished to'' each place that term appears and inserting ''filed with'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking ''furnished'' and inserting ''filed'';

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking ''furnish to'' and inserting ''file with''; and

(C) by striking ''furnishing'' each place that term appears and inserting ''filing'';

(3) in subsection (d)(1), as so redesignated by this Act—

(A) in subparagraph (B), by striking ''furnished to'' and inserting ''filed with''; and

(B) in subparagraph (D), by striking ''furnish'' and inserting ''file'';

(4) in subsection (e)(1), by striking ''furnishing a written notice of withdrawal to the Commission'' and inserting ''filing a written notice of withdrawal with the Commission'';

(5) in subsection (k), by striking ''furnish to'' and inserting ''file with'';

(6) in subsection (l)(2)(A)(i), by striking ''furnished'' and inserting ''filed''; and

(7) in subsection (m)(2), by striking ''furnished'' and inserting ''filed''.

(b) AUTHORITY TO SANCTION ASSOCIATED PERSONS.—Section 15E(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended—

(1) by inserting after ''or revoke the registration of any nationally recognized statistical rating organization'' the following: '', or take enforcement action against or sanction any person who is or was associated, or is or was seeking to become associated, with a nationally recognized statistical rating organization,''; and

(2) by inserting ''bar,'' after ''placing of limitations, suspension,''.

On page 1047, strike lines 3 through 15 and insert the following:

''(B) require a securitizer to retain an economic interest—

''(i) of not less than 5 percent of the credit risk associated with a pool of assets used to create a series of asset-backed securities, and ensure that such economic interest is applied to multiple credit tranches derived from the pool of assets in a manner reasonably designed to ensure that the securitizer retains an economic interest in the success of each class of securities resulting from the securitization of the asset pool; or

''(ii) of less than 5 percent of the credit risk associated with a pool of assets used to create a series of asset-backed securities, if and only if each of the assets in the pool pose a low credit risk, the originator meets the underwriting standards prescribed under paragraph (2)(B), and the securitizer conducts a due diligence review reasonably designed to ensure the assets and originator meet the requirements of this paragraph;

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.

''(2) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules to carry out this section and to prevent evasions thereof.''.

At the end of the bill, add the following:

SEC. 1221. MORTGAGE STANDARDS.

(a) PROHIBITION ON STATED INCOME AND NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON STATED INCOME AND NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the borrower's income was not verified or in which the loan balance may negatively amortize.

''(2) JOINT RULEMAKING.—The Chairman of the Board, the Chairperson of the Federal Deposit Insurance Corporation, and the Director of the Bureau of Consumer Financial Protection may issue joint rules to carry out the purposes of this subsection. Rules issued under this paragraph may—

''(A) specify what documentation may be used to verify the income of a borrower under paragraph (1), including tax information, asset statements, prior loan repayment information, or any other documentation that the Chairmen and the Director jointly deem necessary and appropriate; and

''(B) define 'negatively amortize', including by making an exception for home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(b) EFFECTIVE DATE.—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (a)) shall take effect not later than 180 days after the date of the enactment of this Act, whether or not any rulemaking under subsection (n)(2) of such Act has been initiated or completed.

SEC. 1222. GUSTAFSON FIX.

(a) DEFINITION OF PROSPECTUS.—Section 2(a)(10) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10)) is amended—

(1) by inserting before ''except that'' the following: ''(whether or not such security is offered or sold pursuant to a registration statement or the security or the transaction is exempt from this title or from section 5 of this title pursuant to the provisions of sections 3 or 4)''; and

(2) by striking ''at the time of such'' and inserting ''at the time such''.

(b) CIVIL LIABILITIES.—Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. 77l(a)(2)) is amended by inserting ''(as defined in section 2(a)(10) of this title)'' after ''prospectus''.

SEC. 1223. COOLING OFF PERIOD.

Section 207 of title 18, United States Code, is amended by adding at the end the following:

''(m) ONE-YEAR RESTRICTION ON FEDERAL FINANCIAL REGULATORS.—

''(1) IN GENERAL.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

''(A) was an officer or employee (including any special Government employee) of a covered Federal agency;

''(B) served 2 or more months during the final 12 months of the employment of the person with the covered Federal agency participating personally and substantially on behalf of the covered Federal agency in the regulation or oversight of, or in an enforcement action against, a particular financial institution or holding company; and

''(C) within 1 year after the completion date of the service or employment of the person with the covered Federal agency, knowingly accepts compensation as an employee, officer, director, or consultant from—

''(i) the financial institution described in subparagraph (B), any holding company that controls the financial institution, or any other company that controls the financial institution; or

''(ii) the holding company described in subparagraph (B), or any other financial institution that is controlled by such holding company,

shall be punished as provided in section 216 of this title.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'covered Federal agency' means the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, each Federal Reserve Bank, the National Credit Union Administration, the Financial Stability Oversight Council, the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Bureau of Consumer Financial Protection, and the Public Company Accounting Oversight Board;

''(B) the term 'financial institution' means any business or holding company that is registered with or regulated by a covered Federal agency, including any foreign financial institution or holding company that has a physical location in any State and is registered with or regulated by a covered Federal agency; and

''(C) the term 'consultant' means a person who works personally and substantially on matters for, or on behalf of, a financial institution or holding company.

''(3) REGULATIONS.—

''(A) IN GENERAL.—Each covered Federal agency may prescribe rules or guidance to administer and carry out this section, including to define the scope of persons referred to in paragraphs (1) and (2)(C), and the financial institutions and holding companies referred to in paragraph (2)(B).

''(B) CONSULTATION.—A covered Federal agency may consult with other covered Federal agencies for the purpose of ensuring that the rules and guidance issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the regulatory and oversight programs used by the covered Federal agencies for the supervision of financial institutions and holding companies.

''(4) WAIVER.—A Federal agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the covered Federal agency, if the head of the covered Federal agency, or the chairman of its board of directors, certifies in writing that granting the waiver would not impair the integrity of the regulatory and oversight efforts of the covered Federal agency.

''(5) PENALTIES.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a financial institution, holding company, or other company in violation of this section, the agency shall impose upon such person one or more of the following penalties:

''(A) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal agency may, subject to notice and an administrative hearing, issue an order—

''(i) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the financial institution, holding company, or other company for a period of up to 5 years; and

''(ii) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial institution or holding company subject to regulation or oversight by the agency for a period of up to 5 years.

''(B) CIVIL MONETARY PENALTY.—The Federal agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose upon such person a civil monetary penalty of not more than $250,000. In lieu of an action by the Federal agency under this subparagraph, the Attorney General of the United States may bring a civil action under this subparagraph in the appropriate United States district court.''.

SEC. 1224. FOREIGN BANK ANTI-TAX EVASION FIX.

Section 5318A of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or impede United States tax enforcement'';

(2) in subsection (a), by striking the subsection heading and inserting the following:

''(a) SPECIAL MEASURES TO COUNTER MONEY LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES TAX ENFORCEMENT.—'';

(3) in subsection (c), by striking the subsection heading and inserting the following:

''(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN OR TO BE IMPEDING UNITED STATES TAX ENFORCEMENT.—'';

(4) in subsection (a)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting ''in matters involving money laundering,'' before ''shall consult''; and

(ii) by striking ''and'' at the end;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

''(B) in matters involving United States tax enforcement, shall consult with the Commissioner of Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and'';

(6) in each of paragraphs (1)(A), (2), (3), and (4) of subsection (b), by inserting ''or to be impeding United States tax enforcement'' after ''primary money laundering concern'' each place that term appears;

(7) in subsection (b), by striking paragraph (5) and inserting the following:

''(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING CERTAIN PAYMENT CARDS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within or involving a jurisdiction outside of the United States to be of primary money laundering concern or to be impeding United States tax enforcement, the Secretary, in consultation with the Secretary of State, the Attorney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon—

''(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

''(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.''; and

(8) in subsection (c)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(9) in subsection (c)(2)(A)—

(A) in clause (ii), by striking ''bank secrecy or special regulatory advantages'' and inserting ''bank, tax, corporate, trust, or financial secrecy or regulatory advantages'';

(B) in clause (iii), by striking ''supervisory and counter-money'' and inserting ''supervisory, international tax enforcement, and counter-money'';

(C) in clause (v), by striking ''banking or secrecy'' and inserting ''banking, tax, or secrecy''; and

(D) in clause (vi), by inserting '', tax treaty, or tax information exchange agreement'' after ''treaty'';

(10) in subsection (c)(2)(B)—

(A) in clause (i), by inserting ''or tax evasion'' after ''money laundering''; and

(B) in clause (iii), by inserting '', tax evasion,'' after ''money laundering''; and

(11) in subsection (d), by inserting ''involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement'' after ''such action''.

SA 3970. Mr. LEVIN (for himself, Mr. KAUFMAN, Mrs. MCCASKILL, and Mr. WHITEHOUSE) 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 the amendment, insert the following:

TITLE ____—AUTHORIZING SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, INTERNATIONAL TRANSACTIONS, OR TYPES OF ACCOUNTS THAT ARE OF PRIMARY MONEY LAUNDERING CONCERN OR IMPEDE UNITED STATES TAX ENFORCEMENT

SEC. ____. AUTHORIZING SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, INTERNATIONAL TRANSACTIONS, OR TYPES OF ACCOUNTS THAT ARE OF PRIMARY MONEY LAUNDERING CONCERN OR IMPEDE UNITED STATES TAX ENFORCEMENT.

Section 5318A of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 5318A. Special measures for jurisdictions, financial institutions, or international transactions that are of primary money laundering concern or impede United States tax enforcement'';

(2) in subsection (a), by striking the subsection heading and inserting the following:

''(a) SPECIAL MEASURES TO COUNTER MONEY LAUNDERING AND EFFORTS TO IMPEDE UNITED STATES TAX ENFORCEMENT.—'';

(3) in subsection (c), by striking the subsection heading and inserting the following:

''(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN OR TO BE IMPEDING UNITED STATES TAX ENFORCEMENT.—'';

(4) in subsection (a)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(5) in subsection (a)(4)—

(A) in subparagraph (A)—

(i) by inserting ''in matters involving money laundering,'' before ''shall consult''; and

(ii) by striking ''and'' at the end;

(B) by redesignating subparagraph (B) as subparagraph (C); and

(C) by inserting after subparagraph (A) the following:

''(B) in matters involving United States tax enforcement, shall consult with the Commissioner of the Internal Revenue, the Secretary of State, the Attorney General of the United States, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and'';

(6) in each of paragraphs (1)(A), (2), (3), and (4) of subsection (b), by inserting ''or to be impeding United States tax enforcement'' after ''primary money laundering concern'' each place that term appears;

(7) in subsection (b), by striking paragraph (5) and inserting the following:

''(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS OR AUTHORIZING CERTAIN PAYMENT CARDS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within or involving a jurisdiction outside of the United States to be of primary money laundering concern or to be impeding United States tax enforcement, the Secretary, in consultation with the Secretary of State, the Attorney General of the United States, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon—

''(A) the opening or maintaining in the United States of a correspondent account or payable-through account; or

''(B) the authorization, approval, or use in the United States of a credit card, charge card, debit card, or similar credit or debit financial instrument by any domestic financial institution, financial agency, or credit card company or association, for or on behalf of a foreign banking institution, if such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument, involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account, payable-through account, credit card, charge card, debit card, or similar credit or debit financial instrument.''; and

(8) in subsection (c)(1), by inserting ''or is impeding United States tax enforcement'' after ''primary money laundering concern'';

(9) in subsection (c)(2)(A)—

(A) in clause (ii), by striking ''bank secrecy or special regulatory advantages'' and inserting ''bank, tax, corporate, trust, or financial secrecy or regulatory advantages'';

(B) in clause (iii), by striking ''supervisory and counter-money'' and inserting ''supervisory, international tax enforcement, and counter-money'';

(C) in clause (v), by striking ''banking or secrecy'' and inserting ''banking, tax, or secrecy''; and

(D) in clause (vi), by inserting '', tax treaty, or tax information exchange agreement'' after ''treaty'';

(10) in subsection (c)(2)(B)—

(A) in clause (i), by inserting ''or tax evasion'' after ''money laundering''; and

(B) in clause (iii), by inserting '', tax evasion,'' after ''money laundering''; and

(11) in subsection (d), by inserting ''involving money laundering, and shall notify, in writing, the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of any such action involving United States tax enforcement'' after ''such action''.

SA 3971. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle C of title III, add the following:

SEC. 333. EXAMINATION AND ENFORCEMENT AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

(a) EXAMINATION AUTHORITY FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—Section 10(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1820(b)(3)) is amended by striking ''whenever the Board'' and all that follows through the period at the end and inserting the following: ''or depository institution holding company whenever the Chairperson or the Board of Directors determines that a special examination of any such depository institution or depository institution holding company is necessary to determine the condition of such depository institution or depository institution holding company for insurance purposes or for purposes of title II of the Restoring American Financial Stability Act of 2010.''.

(b) ENFORCEMENT AUTHORITY.—Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. 1818(t)) is amended—

(1) in paragraph (1)—

(A) by striking ''based on an examination of an insured depository institution'' and inserting ''based on an examination of an insured depository institution or depository institution holding company''; and

(B) by striking ''with respect to any insured depository institution or'' and inserting ''with respect to any insured depository institution, depository institution holding company, or'';

(2) in paragraph (2)—

(A) by inserting ''Chairperson or'' before ''Board of Directors determines, upon a vote'';

(B) in subparagraph (B), by striking ''or'' at the end;

(C) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(D) by adding at the end the following:

''(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund or of the exercise of authority under title II of the Restoring American Financial Stability Act of 2010, or may prejudice the interests of the depositors of an affiliated institution.'';

(3) in paragraph (3)(A), by striking ''upon a vote of the Board of Directors'' and inserting ''upon a determination by the Chairperson or upon a vote of the Board of Directors'';

(4) in paragraph (4)(A)—

(A) by striking ''any insured depository institution'' and inserting ''any insured depository institution, depository institution holding company,''; and

(B) by striking ''the institution'' and inserting ''the institution, holding company,'';

(5) in paragraph (4)(B), by striking ''the institution'' each place that term appears and inserting ''the institution, holding company,''; and

(6) in paragraph (5)(A), by striking ''an insured depository institution'' and inserting ''an insured depository institution, depository institution holding company,''.

(c) BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

''SEC. 51. BACK-UP EXAMINATION AUTHORITY FOR ORDERLY LIQUIDATION PURPOSES.

''The Corporation may conduct a special examination of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, if the Chairperson or the Board of Directors determines an examination is necessary to determine the condition of the company for purposes of title II of that Act.''.

(d) ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.—The Federal Deposit Insurance Act is amended by adding at the end the following:

''SEC. 52. ACCESS TO INFORMATION FOR INSURANCE AND ORDERLY LIQUIDATION PURPOSES.

''(a) ACCESS TO INFORMATION.—The Corporation may, if the Corporation determines that such action is necessary to carry out its responsibilities relating to deposit insurance or orderly liquidation under this Act, title II of the Restoring American Financial Stability Act of 2010, or otherwise applicable Federal law—

''(1) obtain information from an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010;

''(2) obtain information from the appropriate Federal banking agency, or any regulator of a nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010, including examination reports; and

''(3) participate in any examination, visitation, or risk-scoping activity of an insured depository institution, depository institution holding company, or nonbank financial company supervised by the Board of Governors of the Federal Reserve System under section 113 of the Restoring American Financial Stability Act of 2010.

''(b) ENFORCEMENT.—The Corporation shall have the authority to take any enforcement action under section 8 against any institution or company described in paragraph (1) of subsection (a) that fails to provide any information requested under that paragraph.

''(c) USE OF AVAILABLE INFORMATION.—The Corporation shall use, in lieu of a request for information under subsection (a), information provided to another Federal or State regulatory agency, publicly available information, or externally audited financial statements to the extent that the Corporation determines such information is adequate to the needs of the Corporation.''.

SA 3972. Mr. LEVIN (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 1006, strike line 17 and all that follows through page 1007, line 2, and insert the following:

(A) by striking paragraph (2) and inserting the following:

''(2) STANDARDS AND OVERSIGHT.—The Commission shall set standards and exercise oversight of the procedures and methodologies, including qualitative and quantitative data and models, used by nationally recognized statistical rating organizations, to ensure that the credit ratings issued by the nationally recognized statistical rating organizations have a reasonable foundation in fact and analysis. Nothing in this paragraph may be construed to afford a defense against any action or proceeding brought by the Commission to enforce the antifraud provisions of the securities laws.''; and

On page 1019, line 14, strike ''with respect to'' and all that follows through ''organization'' on line 18 and insert ''to ensure that the qualitative and quantitative data and models used by nationally recognized statistical rating organizations produce credit ratings that have a reasonable foundation in fact and analysis. The rules prescribed under this subsection shall require each nationally recognized statistical rating organization''.

On page 1020, line 25, strike ''and''.

On page 1021, line 15, strike the period at the end and insert the following: ''; and

''(4) to assign relatively greater credit risk to a financial product or transaction for which—

''(A) the rating organization lacks adequate historical performance data;

''(B) the assets are provided by persons with a history of providing poorly performing assets;

''(C) income from the assets will not be directly contributed to the securitization, product, or transaction;

''(D) publicly available information, including trading information, indicates that a prior rating misjudged the credit risk of the product or transaction;

''(E) the product or transaction is of sufficient complexity or novelty that the performance of the product or transaction cannot be reliably evaluated; or

''(F) there is any other feature that the Commission may specify.

On page 1023, line 5, strike ''(A)'' and insert the following:

''(A) BASIC INFORMATION.—Each nationally recognized statistical rating organization shall disclose at the beginning of the form developed under paragraph (1) basic information about each of the credit ratings that is the subject of the disclosure, including—

''(i) the latest rating provided for the product or transaction that is the subject of the disclosure;

''(ii) the date upon which the rating described in clause (i) was issued;

''(iii) whether that rating described in clause (i) was intended to be effective for less or more than 1 year after the date of issuance of the rating;

''(iv) the type of asset to which the rating described in clause (i) applies;

''(v) the history and date of any prior rating with respect to the product or transaction during the 5-year period preceding the date of the disclosure; and

''(vi) any other basic information, as the Commission may require.

''(B)

On page 1025, line 19, strike ''(B)'' and insert ''(C)''.

On page 1028 between lines 4 and 5 insert the following:

''(E) NO RELIANCE ON INADEQUATE REPORT.—A nationally recognized statistical rating organization may not rely on a third-party due diligence report if the nationally recognized statistical rating organization has reason to believe that the report is inadequate.

On page 1042, strike line 15 and all that follows through page 1043, line 9, and insert the following:

SEC. 939B. ELIMINATING CONFLICTS OF INTEREST THROUGH INTERMEDIATION.

(a) INTERMEDIATION PROPOSAL.—Not later than 180 days after the date of enactment of this Act, the Commission, through the Office of Credit Ratings, shall issue a notice of proposed rulemaking—

(1) to establish a system that—

(A) allows an intermediary to handle the fees provided by issuers to obtain credit ratings from nationally recognized statistical rating organizations, in order to avoid conflicts of interest that arise when an issuer pays for a credit rating with respect to a financial product or transaction that the issuer plans to sell or execute; and

(B) enables such intermediary to receive fees from issuers, direct fees to nationally recognized statistical rating organizations, and create incentives to reward accurate ratings; and

(2) that directs or facilitates the formation of, or identifies, an intermediary to carry out the system described in paragraph (1).

On page 1044, between lines 2 and 3, insert the following:

SEC. 939D. STRENGTHENING THE ENFORCEMENT AUTHORITY OF THE COMMISSION OVER NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) REQUIREMENT TO FILE APPLICATIONS AND REPORTS WITH COMMISSION.—Section 15E of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(A), by striking ''furnish to'' and inserting ''file with''; and

(B) in paragraph (2), by striking ''furnished to'' each place that term appears and inserting ''filed with'';

(2) in subsection (b)—

(A) in paragraph (1)(A), by striking ''furnished'' and inserting ''filed'';

(B) in paragraph (2), in the matter preceding subparagraph (A), by striking ''furnish to'' and inserting ''file with''; and

(C) by striking ''furnishing'' each place that term appears and inserting ''filing'';

(3) in subsection (d)(1), as so redesignated by this Act—

(A) in subparagraph (B), by striking ''furnished to'' and inserting ''filed with''; and

(B) in subparagraph (D), by striking ''furnish'' and inserting ''file'';

(4) in subsection (e)(1), by striking ''furnishing a written notice of withdrawal to the Commission'' and inserting ''filing a written notice of withdrawal with the Commission'';

(5) in subsection (k), by striking ''furnish to'' and inserting ''file with'';

(6) in subsection (l)(2)(A)(i), by striking ''furnished'' and inserting ''filed''; and

(7) in subsection (m)(2), by striking ''furnished'' and inserting ''filed''.

(b) AUTHORITY TO SANCTION ASSOCIATED PERSONS.—Section 15E(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–7), as amended by this Act, is amended—

(1) by inserting after ''or revoke the registration of any nationally recognized statistical rating organization'' the following: '', or take enforcement action against or sanction any person who is or was associated, or is or was seeking to become associated, with a nationally recognized statistical rating organization,''; and

(2) by inserting ''bar,'' after ''placing of limitations, suspension,''.

SA 3973. Mr. LEVIN (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 1047, strike lines 3 through 15 and insert the following:

''(B) require a securitizer to retain an economic interest—

''(i) of not less than 5 percent of the credit risk associated with a pool of assets used to create a series of asset-backed securities, and ensure that such economic interest is applied to multiple credit tranches derived from the pool of assets in a manner reasonably designed to ensure that the securitizer retains an economic interest in the success of each class of securities resulting from the securitization of the asset pool; or

''(ii) of less than 5 percent of the credit risk associated with a pool of assets used to create a series of asset-backed securities, if and only if each of the assets in the pool pose a low credit risk, the originator meets the underwriting standards prescribed under paragraph (2)(B), and the securitizer conducts a due diligence review reasonably designed to ensure the assets and originator meet the requirements of this paragraph;''.

SA 3974. Mr. LEVIN (for himself, Mr. KAUFMAN, and 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:

On page 1056, line 17, strike the second period and insert the following: ''.

SEC. 946. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15G, as added by this Act, the following new section:

''SEC. 15H. RESTRICTION ON SYNTHETIC ASSET-BACKED SECURITIES.

''(a) DEFINITION.—For purposes of this section, the term 'synthetic asset-backed security' means an asset-backed security with respect to which, by design, the self-liquidating financial assets referenced in the synthetic securitization do not provide any direct payment or cash flow to the holder of the security.

''(b) RESTRICTION.—

''(1) IN GENERAL.—No issuer, underwriter, placement agent, sponsor, or initial purchaser may offer, sell, or transfer a synthetic asset-backed security that has no substantial or material economic purpose apart from speculation on a possible future gain or loss associated with the value or condition of the referenced assets. The Commission may determine whether a synthetic asset-backed security meets the requirements of this section. A determination by the Commission under the preceding sentence is not subject to judicial review.

''(2) RULEMAKING.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules to carry out this section and to prevent evasions thereof.''.

SA 3975. Mr. LEVIN (for himself and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ______. PROHIBITION ON STATED INCOME AND NEGATIVELY AMORTIZING MORTGAGES.

(a) FINDINGS.—Congress finds the following:

(1) The 2008 financial crisis was caused, in part, by poor quality, high risk mortgages that were included in mortgage-backed securities, and that incurred higher rates of delinquency and loss than traditional mortgages, damaging thousands of financial institutions holding the mortgages. Those poor quality, high risk mortgages included billions of dollars in stated income and negatively amortizing mortgages.

(2) Banks that issue stated income mortgages do not verify the borrower's income or assets, or ability to repay the loan, thereby increasing the risk of loan default. Stated income loans also encourage fraud by the borrowers seeking to obtain the funding and by lenders seeking to earn fees from selling the mortgages.

(3) Negative amortization of mortgage loans leads to increased monthly loan payments for borrowers, which, in turn, increases the risk of loan default. During the recent financial crisis, negatively amortized loans defaulted in record numbers, damaging financial institutions and other investors holding those assets.

(4) Years ago, Federal banking regulators banned negatively amortizing credit card loans as a threat to the safety and soundness of banking institutions.

(5) Federal financial regulators and Inspectors General have testified before Congress that stated income and negatively amortizing loans pose a threat to the safety and soundness of United States banks, and to the financial markets where these high risk mortgages are sold and securitized.

(b) PROHIBITION ON STATED INCOME AND NEGATIVELY AMORTIZING MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end following:

''(n) PROHIBITION ON STATED INCOME AND NEGATIVELY AMORTIZING MORTGAGES.—

''(1) IN GENERAL.—Any person who sells, transfers, or plans to sell or transfer at least 1,000 mortgages, mortgage-backed securities, or similar financial instruments within a calendar year shall not include or reference in any of such financial instruments any mortgage in which the borrower's income was not verified or in which the loan balance may negatively amortize.

''(2) JOINT RULEMAKING.—The Chairman of the Board, the Chairman of the Federal Deposit Insurance Corporation, and the Director of the Bureau of Consumer Financial Protection may issue joint rules to carry out the purposes of this subsection. Rules issued under this paragraph may—

''(A) specify what documentation may be used to verify the income of a borrower under paragraph (1), including tax information, asset statements, prior loan repayment information, or any other documentation that the Chairmen and the Director jointly deem necessary and appropriate; and

''(B) define 'negatively amortize', including by making an exception for home equity conversion mortgages, as defined under section 255 of the National Housing Act (commonly referred to as 'reverse mortgages') that are otherwise regulated by a Federal or State agency.

''(3) RULE OF CONSTRUCTION.—As used in this section, the term 'mortgage' shall not be construed to be restricted or limited only to mortgages referred to in section 103(aa).''.

(c) EFFECTIVE DATE.—The requirements under subsection (n)(1) of section 129 of the Truth in Lending Act (as added by subsection (b)) shall take effect not later than 180 days after the date of the enactment of this Act, whether or not any rulemaking under subsection (n)(2) of such Act has been initiated or completed.

SA 3976. Mr. LEVIN (for himself, Mr. COBURN, Mr. REID, and Mr. KAUFMAN), submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle I of title IX, insert the following:

SEC. _____. RESTORATION OF CONGRESSIONAL INTENT THAT PROSPECTUS IS NOT RESTRICTED TO PUBLIC OFFERINGS.

(a) DEFINITION OF PROSPECTUS.—Section 2(a)(10) of the Securities Act of 1933 (15 U.S.C. 77b(a)(10)) is amended—

(1) by inserting before ''except that'' the following: ''(whether or not such security is offered or sold pursuant to a registration statement or the security or the transaction is exempt from this title or from section 5 of this title pursuant to the provisions of sections 3 or 4)''; and

(2) by striking ''at the time of such'' and inserting ''at the time such''.

(b) CIVIL LIABILITIES.—Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. 77l(a)(2)) is amended by inserting ''(as defined in section 2(a)(10) of this title)'' after ''prospectus''.

SA 3977. Mr. LEVIN (for himself, Mr. COBURN, and Mr. KAUFMAN) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end ''too big to fail'', to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 1211. COOLING OFF PERIOD.

Section 207 of title 18, United States Code, is amended by adding at the end the following:

''(m) ONE-YEAR RESTRICTION ON FEDERAL FINANCIAL REGULATORS.—

''(1) IN GENERAL.—In addition to the restrictions set forth in subsections (a) and (b), any person who—

''(A) was an officer or employee (including any special Government employee) of a covered Federal agency;

''(B) served 2 or more months during the final 12 months of the employment of the person with the covered Federal agency participating personally and substantially on behalf of the covered Federal agency in the regulation or oversight of, or in an enforcement action against, a particular financial institution or holding company; and

''(C) within 1 year after the completion date of the service or employment of the person with the covered Federal agency, knowingly accepts compensation as an employee, officer, director, or consultant from—

''(i) the financial institution described in subparagraph (B), any holding company that controls the financial institution, or any other company that controls the financial institution; or

''(ii) the holding company described in subparagraph (B), or any other financial institution that is controlled by such holding company,

shall be punished as provided in section 216 of this title.

''(2) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'covered Federal agency' means the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, each Federal Reserve Bank, the National Credit Union Administration, the Financial Stability Oversight Council, the Securities and Exchange Commission, the Commodities Futures Trading Commission, the Bureau of Consumer Financial Protection, and the Public Company Accounting Oversight Board;

''(B) the term 'financial institution' means any business or holding company that is registered with or regulated by a covered Federal agency, including any foreign financial institution or holding company that has a physical location in any State and is registered with or regulated by a covered Federal agency; and

''(C) the term 'consultant' means a person who works personally and substantially on matters for, or on behalf of, a financial institution or holding company.

''(3) REGULATIONS.—

''(A) IN GENERAL.—Each covered Federal agency may prescribe rules or guidance to administer and carry out this section, including to define the scope of persons referred to in paragraphs (1) and (2)(C), and the financial institutions and holding companies referred to in paragraph (2)(B).

''(B) CONSULTATION.—A covered Federal agency may consult with other covered Federal agencies for the purpose of ensuring that the rules and guidance issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the regulatory and oversight programs used by the covered Federal agencies for the supervision of financial institutions and holding companies.

''(4) WAIVER.—A Federal agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the covered Federal agency, if the head of the covered Federal agency, or the chairman of its board of directors, certifies in writing that granting the waiver would not impair the integrity of the regulatory and oversight efforts of the covered Federal agency.

''(5) PENALTIES.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a financial institution, holding company, or other company in violation of this section, the agency shall impose upon such person one or more of the following penalties:

''(A) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal agency may, subject to notice and an administrative hearing, issue an order—

''(i) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the financial institution, holding company, or other company for a period of up to 5 years; and

''(ii) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial institution or holding company subject to regulation or oversight by the agency for a period of up to 5 years.

''(B) CIVIL MONETARY PENALTY.—The Federal agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose upon such person a civil monetary penalty of not more than $250,000. In lieu of an action by the Federal agency under this subparagraph, the Attorney General of the United States may bring a civil action under this subparagraph in the appropriate United States district court.''.

SA 3978. Mr. JOHNSON (for himself, Ms. LANDRIEU, Mr. BURRIS, Mr. CARDIN, Mr. BROWNBACK, Ms. MURKOWSKI, Mr. BENNETT, and Mr. CRAPO) 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 58, line 3, insert after ''Council.'' the following: ''Notwithstanding the foregoing, the Federal Housing Finance Agency shall consider, but is not required to adopt, any Council recommendation regarding concentration limits on fully secured extensions of credit by a Federal home loan bank to any member or former member institution made in compliance with Federal Housing Finance Agency regulations.''.

On page 99, line 14, insert after ''risks.'' the following: ''Notwithstanding any other provision of this title, the Board of Governors shall not prescribe standards that limit fully secured extensions of credit by a Federal home loan bank to any member or former member institution made in compliance with Federal Housing Finance Agency regulations.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate to conduct a hearing on May 11, 2010, at 10 a.m., in room SR–325 of the Russell Senate Office Building.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Tuesday, May 11, 2010, at 2:30 p.m. in room 406 of the Dirksen Office Building.

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

COMMITTEE ON FINANCE

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on May 11, 2010, at 10 a.m., in room 215 of the Dirksen Senate Office Building, to conduct a hearing entitled ''The President's Proposed Fee on Financial Institutions Regarding TARP: Part 3''.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet during the session of the Senate to conduct a hearing entitled ''Safe Patient Handling & Lifting Standards for a Safer American Workforce'' on May 11, 2010. The hearing will commence at 2:30 p.m. in room 430 of the Dirksen Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. DODD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on May 11, 2010, at 10 a.m., in room SD–226 of the Dirksen Senate Office Building, to conduct a hearing entitled ''Oversight of U.S. Citizenship and Immigration Services.''

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

SUBCOMMITTEE ON OVERSIGHT AND SUBCOMMITTEE ON WATER AND WILDLIFE

Mr. DODD. Mr. President, I ask unanimous consent that the Subcommittee on Oversight and the Subcommittee on Water and Wildlife be authorized to meet during the session of the Senate on May 11, 2010, at 10 a.m., in room 406 of the Dirksen Office Building.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DODD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on May 11, 2010, at 2:30 p.m.

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

COMMEMORATING THE DEDICATION AND SACRIFICES OF FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT OFFICERS

Mr. DODD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 370, S. Res. 511.

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

The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 511) commemorating and acknowledging the dedication and sacrifices made by the Federal, State, and local law enforcement officers who have been killed or injured in the line of duty.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LEAHY. Mr. President, I am pleased that today the Senate will unanimously agree to a resolution to honor the service of our Nation's law enforcement officers. With this action we demonstrate the Senate's strong support as we observe and celebrate National Police Week. I thank Senator SESSIONS, ranking member of the Judiciary Committee, for joining me as the lead cosponsor of this resolution, and Senators DURBIN, SPECTER, KOHL, KLOBUCHAR, FEINSTEIN, WHITEHOUSE, GRAHAM, GRASSLEY, FEINGOLD, SCHUMER, HATCH and BOXER for lending their support as well.

This week we will reflect on the extraordinary service and sacrifice given year after year by the men and women of our police forces. As thousands of law enforcement officers arrive in Washington this week to pay tribute to those whose lives were lost in the line of duty, I hope they all know that the Senate stands with them and honors their service and their sacrifice. We welcome these men and women and their families and friends to the Nation's Capital.

This year the names of two brave Vermonters who gave their lives in the line of duty will be added to the Memorial: John Henry Collette of the Addison County Sheriffs Office, died July 17, 1932, and Robert Daniel Rossier of the Vermont Highway Patrol, died September 9, 1935. The inscription of their names on the National Law Enforcement Memorial ensures that their service and sacrifice will not be forgotten.

Once again, I am proud that the Senate has unanimously approved this resolution and formally recognized National Police Week and National Peace Officers Memorial Day.

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 related to the resolution be printed in the RECORD, as if read.

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

The resolution (S. Res. 511) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 511

Whereas the well-being of the people of the United States is preserved and enhanced as a direct result of the vigilance and dedication of law enforcement personnel;

Whereas more than 900,000 men and women, at great risk to their personal safety, serve the people of the United States as guardians of the peace;

Whereas peace officers are on the front lines in protecting the schools and schoolchildren of the United States;

Whereas in 2009, 116 peace officers across the United States were killed in the line of duty;

Whereas Congress should strongly support initiatives to reduce violent crime and increase the factors that contribute to the safety of law enforcement officers, including—

(1) equipment of the highest quality and modernity;

(2) increased availability and use of bullet-resistant vests;

(3) improved training; and

(4) advanced emergency medical care;

Whereas the names of 18,983 Federal, State, and local law enforcement officers who lost their lives in the line of duty protecting the people of the United States are engraved on the National Law Enforcement Officers Memorial in Washington, District of Columbia;

Whereas in 1962, President John F. Kennedy designated May 15 as National Peace Officers Memorial Day;

Whereas, on May 15, 2010, more than 20,000 peace officers are expected to gather in Washington, District of Columbia, to join with the families of recently fallen comrades to honor those comrades and all others who went before the peace officers: Now, therefore, be it

Resolved, That the Senate—

(1) commemorates and acknowledges the dedication and sacrifices made by the Federal, State, and local law enforcement officers who have been killed or injured in the line of duty;

(2) recognizes May 15, 2010, as ''National Peace Officers Memorial Day''; and

(3) calls on the people of the United States to observe that day with appropriate ceremony, solemnity, appreciation, and respect.

MEASURE READ THE FIRST TIME—S. 3347

Mr. DODD. Mr. President, I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The legislative clerk read as follows:

A bill (S. 3347) to extend the National Flood Insurance Program through December 31, 2010.

Mr. DODD. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard.

The bill will be read for the second time on the next legislative day.

ORDERS FOR WEDNESDAY, MAY 12, 2010

Mr. DODD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Wednesday, May 12; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate resume consideration of 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, there will be three rollcall votes beginning at 10 a.m. Those votes will be in relation to the Merkley amendment No. 3962, the Corker amendment No. 3955, and then the Hutchison and Klobuchar amendment No. 3759, as modified.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. DODD. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 7:01 p.m., adjourned until Wednesday, May 12, 2010, at 9:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate, Tuesday, May 11, 2010:

THE JUDICIARY

TIMOTHY S. BLACK, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF OHIO.

JON E. DEGUILIO, OF INDIANA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF INDIANA.